

18 December 2015

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

This document

1 This memorandum of understanding describes how the FCA and the Financial Ombudsman Service Limited will cooperate with each other in the exercise of their respective functions as required by paragraph 3A(2) of Schedule 17 of the Financial Services and Markets Act 2000 (FSMA). It does not address the separate functions and responsibilities of FCA and the Financial Ombudsman Service Limited under the *Alternative Dispute Resolution (ADR) Directive*¹ and the *Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015*.

2 This memorandum of understanding provides a framework for the FCA and the Financial Ombudsman Service Limited to cooperate and communicate constructively to carry out their independent roles and separate functions.

3 This cooperation and communication benefits both consumers of financial services and the financial services industry by contributing to the efficient functioning of the statutory systems for conduct regulation and dispute-resolution.

4 This is particularly important where the FCA is taking supervisory or regulatory action and, at the same time, the Financial Ombudsman Service Limited's ombudsman scheme is receiving a significant number of cases concerning the same issue.

5 The FCA and the Financial Ombudsman Service Limited will continue to monitor the operation of this memorandum and review it from time to time as necessary.

Roles of the FCA and the Financial Ombudsman Service Limited

6 Under the Financial Services and Markets Act 2000 (FSMA):

(a) The FCA operates as the financial conduct regulator. Its strategic objective is ensuring that the relevant markets function well.² Further, its operational objectives include: securing an appropriate degree of protection for consumers; protecting and enhancing the integrity of the UK financial system; and promoting effective competition in the interests of consumers in the market for regulated financial services. 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.

(b) The Financial Ombudsman Service Limited's main role, as the scheme operator, is to operate a scheme to resolve disputes, as an alternative to the civil courts. The scheme's statutory purpose is to resolve certain disputes quickly and with minimum formality on the

¹ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC.

² The relevant markets are the financial markets, the markets for regulated financial services and the markets for services that are provided by persons other than authorised persons in carrying on regulated activities, but are provided without contravening the general prohibition.

basis of what is fair and reasonable in all the circumstances. The scheme has two jurisdictions – the compulsory jurisdiction and the voluntary jurisdiction.

(c) The FCA discharges its objectives by setting standards that regulated firms must meet and taking action where such firms may be breaching those standards. The FCA does not investigate individuals' complaints against the firms it regulates. - this is the role of the Financial Ombudsman Service (ombudsman service).

(d) The ombudsman service is operationally independent from the FCA. It provides consumers with a free independent service for resolving disputes between consumers and businesses quickly and informally. The 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, regulations, regulator's rules, guidance and standards, relevant codes of practice and good industry practice (unless it is a "relevant complaint" within the meaning of section 404B(3) of FSMA).

(e) FSMA requires the FCA to take the necessary steps to ensure that the ombudsman service is, at all times, capable of fulfilling its functions under FSMA. Responsibility for oversight of the day-to-day operations of the ombudsman service is for the ombudsman service's board.

Statutory responsibilities

7 Under FSMA, the FCA is required to take such steps as are necessary to ensure that the scheme operator – the Financial Ombudsman Service Limited – is, at all times, capable of exercising its statutory functions, and in particular is responsible for:

- (a) appointing and removing the directors (including the chairman) of the Financial Ombudsman Service Limited (in the case of the chairman, with the approval of the 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 Limited 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, specifying the complainants who are eligible, setting the time limits for referring complaints to the ombudsman service, setting the money award limit, and setting levies to cover the operation of that jurisdiction.

8 In addition, the FCA must exercise some functions as set out at paragraph 2(3) of Schedule 17 of FSMA in a way which is consistent with enabling the scheme operator, at all times to qualify as an 'ADR entity' in accordance with Article 20(2) of the ADR Directive and to meet the quality requirements in Chapter II of the ADR Directive.

9 The Financial Ombudsman Service Limited (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 and 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 ombudsman service, setting the limits on awards and setting levies to cover the establishment and operation of the voluntary jurisdiction; and

(c) making scheme rules³ or standard terms for the compulsory and voluntary jurisdictions on: ombudsman procedures; awards of costs and interest; and case fees.

10 The Financial Ombudsman Service Limited is responsible, in particular, 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 issues

11 Mindful of its obligation to take such steps as are necessary to ensure that the scheme operator, the Financial Ombudsman Service Limited, 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 Limited (and in the case of the appointment of the chairman, seek the approval of the Treasury);

(b) review the reports submitted to it by the Financial Ombudsman Service Limited 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 the Financial Ombudsman Service Limited on the desirability (or not) of developing any rules regarding the requirements for reports on the discharge of its or the Chief Ombudsman's functions;

(d) review the annual accounts and the report by the Comptroller and Auditor General;

(e) consider and, where appropriate, approve, the annual budget proposed by the Financial Ombudsman Service Limited in a timely manner; and

(f) take any other steps that may be necessary to ensure that the Financial Ombudsman Service Limited is, at all times, capable of exercising its statutory functions.

³ The Financial Ombudsman Service Limited must make scheme rules for the compulsory jurisdiction in a way which is consistent with enabling it to qualify as an ADR entity and to meet the quality requirements in Chapter II of the ADR Directive.

12 In appointing the directors of the Financial Ombudsman Service Limited, the FCA will take into account the views of the chairman of the Financial Ombudsman Service Limited and the need to maintain an appropriate balance in the composition of the board.

13 The FCA and the Financial Ombudsman Service Limited will cooperate in the smooth running, and periodic review, of the arrangements for:

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

Cooperation

14 The FCA and the Financial Ombudsman Service Limited 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;
- (c) meet and communicate regularly – at appropriate levels of seniority – to discuss matters of mutual interest;
- (d) consult one another at an early stage on any issues that might have significant implications for the other organisation; and
- (e) share (for comment) at an early stage, draft documents (such as consultation papers and briefings) that affect the other's functions.

15 The FCA and the Financial Ombudsman Service agree to cooperate for the purposes set out in paragraph 13 through a number of forums, including but not limited to:

- (a) ongoing engagement across issues that may arise at working level;
- (b) regular bilateral discussions;
- (c) membership of the Coordination Committee; and
- (d) attendance at the FCA Oversight Committee.

16 Both the FCA and the Financial Ombudsman Service are members of the Coordination Committee. The main functions of the committee are broadly to contribute to the identification and consideration of emerging risks that have the potential to cause widespread detriment amongst financial services consumers, and contribute to the effective exchange of information between the members of the committee (to the extent allowed by law), enabling responses to be aligned when this is consistent with the statutory functions of members of the committee

Information sharing

17 The Financial Ombudsman Service Limited must disclose information to the FCA where in its opinion it considers that the information would or might be of assistance to the FCA in advancing

one or more of the FCA's operational objectives. The FCA will have regard to this information in giving effect to its consumer protection objectives.

18 Subject to any restrictions on disclosure of information (confidential or otherwise) at law:

(a) The Financial Ombudsman Service Limited may disclose information to the FCA for the purpose of assisting the Financial Ombudsman Service Limited discharge its own functions and for the purpose of enabling or assisting the FCA to discharge any of its public functions.

(b) The FCA may disclose information to the Financial Ombudsman Service Limited for the purpose of enabling or assisting the FCA to discharge any of its public functions or enabling or assisting the Financial Ombudsman Service Limited to discharge its functions. The FCA may also disclose information to the Chief Ombudsman and any other member of the panel of ombudsman for the purpose of enabling or assisting such persons to carry out their functions.

19 Subject to any restrictions on disclosure of information (confidential or otherwise) at law, the FCA and the Financial Ombudsman Service Limited will seek to adhere to the following procedures when sharing information between the two entities:

(a) The Financial Ombudsman Service Limited 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 Limited will give the FCA regular information about the number and types of complaints handled.

(c) If concerns arise, the Financial Ombudsman Service Limited 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 Limited 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 Limited information about: proposed changes to rules or guidance on complaints-handling; and, when it is relevant to the Financial Ombudsman Service Limited's functions, actual and contemplated regulatory action.

(f) Where either the FCA or the Financial Ombudsman Service Limited seek to share information which may be legally privileged, the relevant agency will adhere to any protocols that may have been agreed for the exchange of such information.