

MEMORANDUM OF
UNDERSTANDING BETWEEN

The Claims Management Regulator

and

The Financial Conduct Authority

CONTENTS

1. Introduction
2. Role of the Claims Management Regulator
3. Role of the Financial Conduct Authority
4. Intelligence and exchange of Information
5. Facilitating information exchange
6. Investigations
7. Other Assistance
8. Conclusion
9. Review of Memorandum

MEMORANDUM OF UNDERSTANDING

1. Introduction

- 1.1 This Memorandum records a mutual understanding of the common interests between the Claims Management Regulator (CMR), currently part of the Ministry of Justice, and the Financial Conduct Authority (FCA). It does not create any legally binding obligations, confer any rights, modify or supersede any domestic laws or regulatory requirements that apply to either the CMR or the FCA.
- 1.2 The annex to this Memorandum sets out the key pieces of legislation relevant to the CMR and the FCA.
- 1.3 It provides a framework for the exchange of information and reports concerning allegations of alleged criminal conduct, malpractice, professional misconduct or breaches of rules, or statutory provisions by financial service firms and claims management businesses. It:
- promotes a clear understanding of the roles of the CMR and FCA and their respective investigative processes and procedures;
 - sets out our understanding of the basis for exchanging information and intelligence between the CMR and the FCA; and
 - provides a basis for effective co-operation between the CMR and the FCA in the areas of information exchange and investigations.

2. The Role of the CMR

- 2.1 The CMR is responsible for the regulatory regime for claims management activities under Part 2 of the Compensation Act 2006. Regulation applies to persons or bodies that provide claims management services on a commercial basis in relation to personal injuries, housing disrepair, employment, criminal injuries, industrial injuries disablement benefits and financial products and services.
- 2.2 The statutory objectives of the CMR are:
- protecting and promoting the interests of consumers;
 - protecting and promoting the public interest;
 - improving standards of competence/ conduct of authorised persons;
 - improving access to justice; and
 - promoting practices likely to facilitate competition between different providers of regulated claims management services.
- 2.3 In accordance with regulation 10 of the Compensation (Claims Management Services) Regulations 2006 (CCMSR) the CMR is responsible for authorising suitable applicants to provide regulated claims management services.
- 2.4 All individuals and professional firms wishing to provide regulated claims management services need to satisfy the criteria set out in regulation 10 of the CCMSRs; after authorisation, authorised persons are required to comply with the conditions of authorisation, which include the CMR's Conduct of Authorised Persons Rules 2007. The

rules are designed to ensure that amongst other things businesses operate responsibly, with honesty and integrity, and observe all laws and regulations relevant to their business.

Investigative processes

- 2.5 As part of the authorisation process, applicants provide written consent for the CMR to conduct investigations into information disclosed in their application forms. The application form which is approved under CCMSR 2006, includes the following declaration:

“I authorise the MOJ to make such enquiries and to seek further information as it thinks appropriate to verify the information on this form and third parties to provide private data in response to such enquiries.”

- 2.6 Beyond granting or refusing applications for authorisation, the CMR has statutory powers for the regulation of authorised persons, including monitoring and investigating their conduct and taking enforcement action. It can also investigate and take action in cases of suspected unauthorised activity.
- 2.7 Following an investigation, CMR staff may prepare and recommend enforcement action against an authorised person. Recommendations and intelligence are then considered by the Head of Claims Management Regulation who decides whether enforcement action is appropriate.
- 2.8 Firms or individuals who are discontent with decisions or disciplinary action taken by the CMR reserve the right to appeal decisions at the First-tier Tribunal (Claims Management Services).

Enforcement Policy

- 2.9 This is published on the CMR website at <http://www.justice.gov.uk/claims-regulation>

3. The Role of the FCA:

- 3.1 The FCA's powers and responsibilities are set out in the Financial Services and Markets Act 2000 (FSMA) as amended in 2013. The FCA has the single strategic objective of protecting and enhancing confidence in the UK financial system and three operational objectives:
- securing an appropriate degree of protection for consumers;
 - promoting competition in financial services; and
 - protecting and enhancing the integrity of the UK financial system.
- 3.2 FSMA gives the FCA the power to make rules which are binding on regulated firms and persons. The FCA is also responsible for authorisation and supervision of firms that undertake regulated activities and enforcement of FSMA requirements. Carrying out regulated activities in the UK without being authorised (or exempt) by the FCA is a criminal offence.
- 3.3 The FCA also has other responsibilities outside the scope of FSMA these include the:
- Enterprise Act 2002: the power to stop traders infringing a wide range of consumer protection legislation where those infringements harm the collective interests of consumers;

- Unfair Terms in Consumer Contracts Regulations 1999: the FCA may seek an injunction to prevent the use of an unfair contract term in a financial services contract;
- Distance Marketing Regulations 2004: responsibility for considering and taking action against persons responsible for breaching specified contracts;
- Payment Services Regulations 2009: responsibility for registering and authorising authorised payment institutions and regulating payment service providers; and
- Electronic Money Regulations 2011: responsibility for registering or authorising electronic money institutions.
- Legal Aid, Sentencing and Punishment of Offenders Regulations 2013

Investigative processes:

- 3.4 Under FSMA, and other regulations the FCA has an extensive range of disciplinary, criminal and civil powers to take action against regulated and non-regulated firms and individuals who are failing or have failed to meet its requirements. Following the referral of a firm to the FCA's enforcement division, a typical investigation will involve:
- a) appointment of investigators, which the firm or individual will be made aware of;
 - b) investigative work (e.g. request for documents or files, interviews of witnesses or subjects etc.) followed by an internal review by a lawyer that is not part of the investigative team;
 - c) a preliminary report to the firm or individual about the outcome of the investigation, who has 28 days to respond;
 - d) submission to the Regulatory Decisions Committee (RDC) if, in light of the investigation, FCA staff believe that action is justified. (Members of the RDC are appointed by, and are accountable to, the FCA Board and represent the public interest. Staff involved in the investigation will not be involved in the RDC's decision making.);
 - e) a warning notice from the RDC to the firm or individual confirming that the FCA intends taking further action, where the RDC considers it appropriate to do so;
 - f) representations from the individual or firm to the RDC about the case; and
 - g) where appropriate, a decision notice from the RDC about the outcome of the investigation.
- 3.5 Firms or individuals who are discontent with decisions or disciplinary action taken by the FCA have the right to appeal the decision at the Upper Tribunal.
- 3.6 At any stage in the investigative process the FCA may issue a private warning to the firm or individual and close the investigation. It may also seek to resolve the issue through settlement discussions, for which the FCA offers a discount scheme for financial penalties.
- 3.7 The FCA also issues alerts about firms and individuals based both overseas and in the UK when there are grounds to suspect that they are offering UK consumers and investors financial services or products without the necessary authorisation from the FCA or overseas EEA regulators.

3.8 Further information about the FCA's Approach can be found in the following document:
http://www.fsa.gov.uk/pubs/events/fca_approach.pdf

4. **Intelligence and Exchange of Information**

4.1 Subject to the restrictions on the exchange of confidential information, and in so far as it is practical and possible to do so:

- the CMR will pass to the FCA indications of malpractice and/or professional misconduct or breach of rules or statutory provisions committed by an FCA regulated business or individual in the course of his or her association with a claims management business, or acting as an officer, agent, employee or person having, or appearing to the regulator to have, significant influence over the policy or management of the business; and
- the FCA will pass to the CMR indications or evidence of any breaches of law or misconduct (including suspected infringements of the Compensation Act 2006 and breaches of any rules there under), committed by any person acting as a claims management business (whether authorised or unauthorised) or as an officer, agent, employee or other person having, or appearing to the regulator to have, significant influence over the policy or management of the business. This includes not only activities of a criminal nature, but evidence of breaches or potential breaches of any conduct rules under the Compensation Act.

Confidential information

4.2 The exchange of confidential information between the FCA and CMR is subject to statutory restrictions.

4.3 Subject to the appropriate disclosure restrictions under Part 9 of the Enterprise Act 2002 (the "Act"), the CMR may disclose confidential information to the FCA to facilitate the carrying out of a function of the FCA or a function of the CMR.

4.4 The disclosure of confidential information by the FCA to the CMR is subject to s. 348 of FSMA and the disclosure gateways provided by HM Treasury under s. 349 FSMA. These are provided in the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations (SI 2001 no.2188) (the "Regulations"). The information remains subject to s. 348 in the hands of the CMR.

4.5 Under the Regulations confidential information received by the FCA may be disclosed to the CMR, where it is for the purpose of the FCA discharging its public functions (for example, authorising persons to carry out regulated activities, prohibiting persons that are not fit and proper to carry out regulated activities, making rules applying to persons carrying out regulated activities, disciplining authorised persons etc.)

4.6 Disclosure is not permitted if it would be in contravention of any of the single market restrictions as defined in the Regulations.

4.7 The disclosure of confidential information received by the FCA to the CMR for the purposes of the CMR's functions is also subject to the Regulations. Under the Regulations, the FCA may disclose confidential information to the CMR for the purpose of enabling or assisting the CMR to discharge its functions as such. To use this gateway the information must not be subject to any single market restrictions.

4.8 Confidential information does not include information where:

- consent is given to exchange the information by the provider of the information or, if different, by the person or business to whom the information relates;
- the information has already and lawfully been disclosed to the public; or
- the information is in the form of a summary which does not allow individuals or firms to be identified.

Transfer of information and personal data:

- 4.9 Any information transferred will be in a secure manner. Personal data held by either the CMR or the FCA will be held only for as long as necessary and will be destroyed securely after its use. Neither the CMR nor the FCA will further disclose information received from the other party without prior consultation.

5. Facilitating information and intelligence exchange

- 5.1 In order to facilitate the effective and efficient flow of information and intelligence between the CMR and the FCA, both organisations will designate one or more persons to act as the primary points of contact. The role of the designated persons will be to ensure that:
- information is exchanged with the appropriate degree of speed and security;
 - the flow of information is in accordance with the restrictions on information exchange; and
 - the information exchanged is not trivial or creating an undue burden on either the CMR or the FCA.
- 5.2 The CMR will prioritise the exchange of information and intelligence where it concerns an allegation or evidence of fraud or other criminal activity by an authorised (or unauthorised) FCA regulated firm. Likewise, the FCA will prioritise the exchange of information and intelligence where it concerns an allegation or evidence of fraud or other criminal activity by an authorised (or unauthorised) claims management business.
- 5.3 In addition to liaison between primary points of contact, quarterly meetings will be held between FCA and CMR officials to discuss areas of mutual strategic interest, including regulatory and market developments.
- 5.4 The CMR and the FCA will review the processes in place to facilitate information and intelligence exchange annually.
- 5.5 The CMR and FCA will also both take part in the Co-ordination Committee in order to strengthen coordination and promote continued discussion to identify and analyse emerging conduct risks in financial services.

6. Investigations

- 6.1 In order to ensure effective working, the CMR and the FCA will meet periodically in order to discuss investigations of mutual interest. Where possible and in appropriate cases, the CMR and the FCA will co-operate in the course of investigations with a view to avoiding duplication of investigative work in order to better deliver their respective functions.

- 6.2 Case conferences may be held where the proper sharing of intelligence and other evidential information could result in an agreed investigative process. These processes may include each organisation investigating separately or with an element of co-operation where both agencies investigate at the same time.
- 6.3 Where either the CMR or the FCA believe that an investigation by the other party is essential to its enforcement work it may request such an investigation. The other party will consider the request on a best endeavours basis, having regard to the extent to which it falls within the scope of its responsibilities and criteria for taking enforcement action.
- 6.4 If they carry out simultaneous investigation into a business or person, the CMR and the FCA will co-ordinate to ensure that any enforcement action is, where possible, consistent in both effect and the time at which it is taken

7. **Other Assistance**

- 7.1 Where CMR is involved in an investigation into malpractice and/or professional misconduct in connection with claims management businesses, the FCA will in appropriate cases, subject to available resources, provide advice and guidance to CMR on the application of its rules.
- 7.2 On occasions third parties ask the FCA to take action and indicate that a crime or crimes may have been committed by an authorised business or person. The complainant will normally be directed to inform the Police and CMR insofar as it relates to a claims management matter, within the terms of this Memorandum. Such facts can sometimes only be communicated to the Police or MOJ with the client's consent.
- 7.3 Where enforcement action by the FCA shows that an FCA-authorized person or employees of an FCA-authorized firm are guilty of professional misconduct and the person concerned is also associated with a claims management business, the FCA will advise the CMR. The instances where such notification will be made could result from the FCA's decision to prohibit suspend, or fine the individuals concerned.

8. **Conclusion**

- 8.1 The CMR and the FCA recognise and respect their differing statutory duties, operational priorities and constraints, and confidentiality requirements. However, in the public interest they commit themselves to improve professional co-operation and to the systematic exchange of information in order to prevent professional misconduct, dishonesty and breaches of rules by financial services firms, claims management companies or their respective employees.
- 8.2 Either the CMR or the FCA may terminate this Memorandum at any time for any reason.

Review of Memorandum of Understanding

- 9.1 The FCA and CMR will consider at least annually as appropriate:
- any issues that have arisen from the operation of this Memorandum;
 - the content and application of this Memorandum and any changes which need to be made; and

- whether any procedures in support of this Memorandum need to be changed.

Publication

9.3 A copy of this Memorandum is available on the FCA website.

Signed 
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Chris Woolard
Policy, Risk and Research
For the Financial Conduct
Authority


Kevin Rousell
Head of Claims Management
Regulation

Date 25-3-13

Date 21 February 2013

ANNEX: LEGISLATIVE FRAMEWORK

Key pieces of legislation relating to the FCA and the MoJ are:

1. The FCA:

- Financial Services and Markets Act 2013
- Financial Services and Markets Act 2000
- Handbook of Rules and Guidance
- Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001
- Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 (SI 2001 No 544)
- Financial Services and Markets Act 2000 (Financial Promotion Order) 2001 (SI No 1335)
- Income and Corporation Taxes Act 1988
- Finance Acts (annual)
- Legal Aid, Sentencing and Punishment of Offenders Regulations 2013

2. The CMR:

- Compensation Act 2006
- Compensation (Claims Management Services) Regulations 2006
- Compensation (Regulated Claims Management Services) Order 2006
- Compensation (Specification of Benefits) Order 2006
- Compensation (Exemptions) Order 2007
- Explanatory Memorandum to the Compensation (Regulated Claims Management Services) Order 2006, the Compensation (Specification of Benefits) Order 2006 and the Compensation (Claims Management Services) Regulations 2006
- The Compensation (Exemptions) Amendment (No 1) Order 2007

3. Applicable to both:

- The Enterprise Act 2002
- Data Protection Act 1998
- Freedom of Information Act 2000

- Public Interest Disclosure Act 1998
- The Human Rights Act 1998
- The Regulation of Investigatory Powers Act 2000
- Legal Aid, Sentencing and Punishment of Offenders Act 2013

