

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE FINANCIAL CONDUCT AUTHORITY (FCA)
AND
THE LAW SOCIETY OF SCOTLAND**

concerning:

- 1. exempt professional firms; and**
- 2. authorised professional firms.**

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PART 1: GENERAL

SECTION 1 – APPLICATION AND PURPOSE

1.1 General Principles

- 1.1.1 The purpose of this memorandum of understanding (**‘MoU’**) is to provide a framework for the ongoing working relationship between the Financial Conduct Authority (**‘the FCA’**) and the Law Society of Scotland to enable both parties to discharge their respective functions under the Act (defined below) concerning members (defined below) carrying on exempt regulated activities and authorised professional firms.
- 1.1.2 This MoU is intended to promote the development of an open and consultative relationship between the FCA and the Law Society of Scotland and supplements provisions of the Act (defined below) and the FCA’s Handbook of Rules and Guidance.
- 1.1.3 Neither the FCA nor the Law Society of Scotland will incur any legal liability arising solely from non-compliance with this MoU, and nothing in this MoU shall be construed as requiring the FCA or the Law Society of Scotland to take any action which would otherwise be prohibited by law. In addition, the FSA recognises that the Scottish Legal Complaints Commission provides a complainant with the right to complain to the Commission against any finding of the Law Society of Scotland.
- 1.1.4 The FCA and the Law Society of Scotland agree that information provided to the FCA by the Law Society of Scotland and vice versa under the information sharing provisions of this MoU and which constitutes confidential information about the affairs of the Law Society of Scotland may be shared by the FCA with the Scottish Legal Complaints Commission.

SECTION 2 - DEFINITIONS

2.1 Definitions and Interpretation

In this MoU the following terms and rules of interpretation are used:

“the Act” means the Financial Services and Markets Act 2000;

“authorised person” means a person who is authorised for the purposes of the Act;

“authorised professional firm” means a professional firm which is an authorised person;

“CASS” means the Client Assets Sourcebook in the FSA’s Handbook of Rules and Guidance;

“client” means:

- a) a person who uses, or has used, any of the services provided by a member of the Law Society of Scotland in the course of carrying on exempt regulated activities (including, where the member of the Law Society of Scotland is acting in his capacity as a trustee, a person who is, has been or may be a beneficiary of the trust); or
- b) a person who has rights or interest which are derived from, or otherwise attributable to, the use of any such services by other persons; or
- c) a person who has rights or interests which may be adversely affected by the use of any such services by persons acting on his behalf or in a fiduciary capacity in relation to him;

“client money” means, subject to CASS 7, money of any currency which, in the course of carrying on designated investment business, a firm holds in respect of any investment agreement entered into, or to be entered into, with or for a client, or which a firm treats as client money in accordance with the client money rules;

“complaint” includes any expression of dissatisfaction;

“consumer” means a person who uses, has used, is or may be contemplating using any of the services provided by an authorised professional firm in carrying on regulated activities; who have rights or interests which are derived from, or are otherwise attributable to, the use of any such services by other persons; or who have rights or interests which may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them;

“disciplinary proceedings” shall, where appropriate given the context, be construed as including disciplinary proceedings under the Disciplinary By Laws.

“exempt professional firm” means a person to whom, under section 327 of the Act, the general prohibition does not apply and is licensed by the Law Society of Scotland;

“exempt regulated activity” means a regulated activity which may, as a result of Part XX of the Act, be carried on by a member of the Law Society of Scotland without breaching the general prohibition;

“Gateways Regulations” mean The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (as amended);

“immediately” is to be interpreted as meaning as soon as is reasonably practicable and without undue delay;

“IPRU (INV)” means the Interim Prudential Sourcebook for Investment Business in the FCA’s Handbook of Rules and Guidance;

“member” in relation to the Law Society of Scotland means a person who is entitled to carry on the practice of that profession and, in practising it, is subject to rules of the Law Society of Scotland;

“Part XX” means Part XX of the Act;

“PII” means professional indemnity or professional liability insurance;

“PROF” means the Professional Firms Sourcebook in the FCA’s Handbook of Rules and Guidance;

“professional firm” means a person which is:

- a) an individual who is entitled to practise the profession regulated by the Law Society of Scotland and in practising it is subject to its rules; or
- b) a person (not being an individual) which is managed or controlled by one or more individuals each of whom:
 - (i) is entitled to practise the profession regulated by the Law Society of Scotland; and
 - (ii) in practising it is subject to the rules of the Law Society of Scotland

“proceedings” (where the context so admits) means any process or hearing in a court of civil or criminal jurisdiction;

“rule” means any rule, direction or guidance made or issued by the Law Society of Scotland and which is intended to apply to all or some of its members and includes but is not restricted to rules made under section 332 of the Act and rules of general professional conduct;

“SIS” means the Shared Intelligence System which is an “anything known” enquiry service on individuals and firms that all participating bodies use to locate information held by other regulators;

PART 2: EXEMPT PROFESSIONAL FIRMS

SECTION 3: PROVISION OF INFORMATION ABOUT EXEMPT PROFESSIONAL FIRMS

3.1 Overriding Objective

- 3.1.1 The Law Society of Scotland and the FCA respectively recognise that the overriding objective under Part XX is the provision of an appropriate level of protection for the interests of clients.
- 3.1.2 The FCA's duties and functions under the Act are non-delegable and include but are not limited to the following:
- (i) to comply with its duty under section 325 of the Act and Ch. 3.1 of PROF to keep itself informed about the way in which the Law Society of Scotland supervise and regulate the carrying on of exempt regulated activities by its members;
 - (ii) to keep under review the desirability of the exercising any of its powers under section 328 of the Act (Directions) or section 329 of the Act (Orders);
 - (iii) the duty to act in a manner which is compatible with the regulatory objectives set out in the Act; and
 - (iv) monitoring and enforcement under para 6 of Schedule 1 to the Act.
- 3.1.3 The duties and functions of the Law Society of Scotland under the Act include but are not limited to:
- (i) the powers, duties or functions in relation to members which are or may be exercised for the purposes of supervising and regulating exempt regulated activities (**'the Law Society of Scotland' regulatory functions**); and
 - (ii) its duty to co-operate by the sharing of information and other ways with the FCA, to enable the FCA to fulfil its duties and to keep under review the desirability of exercising its powers under Part XX.
- 3.1.4 The FCA and the Law Society of Scotland will hold liaison meetings at least once a year (unless otherwise agreed) to discuss how they are jointly and separately achieving the objective of providing an appropriate level of protection for the interests of clients.

3.2 Gateways Regulations

- 3.2.1 The FCA and Law Society of Scotland acknowledge that any exchange of confidential information about exempt professional firms or members performing functions in exempt professional firms is subject to the confidentiality requirements of the Act and the Gateways Regulations.

3.3 Matters likely to be of material concern to the FCA

- 3.3.1 The Law Society of Scotland will inform the FCA immediately if it becomes aware that any matter likely to be of material concern to the FCA that may have arisen in relation to any one or more of the following (and which comes within the Law Society of Scotland's remit relevant to this MoU):
- (i) exempt regulated activities; and/or
 - (ii) exempt professional firms.
- 3.3.2 Matters likely to be of material concern to the FCA include but are not limited to:
- (i) Information giving the Law Society of Scotland reason to believe that an exempt professional firm may no longer be a fit and proper person to carry on regulated activities in accordance with section 327(1) of the Act;
 - (ii) Information giving the Law Society of Scotland reasonable cause to believe that the interests of clients are or may be at risk;

- (iii) Information giving the Law Society of Scotland reasonable cause to believe that a member carrying on functions in relation to an exempt professional firm may not be a fit and proper person to carry out the functions concerned;
- (iv) Information giving the Law Society of Scotland reasonable cause to believe that a person may have committed a criminal offence that the FCA has power to investigate under the Act; and
- (v) Information on the prohibition by the Law Society of Scotland of a firm from carrying on insurance mediation activities, in order that the FCA can remove the firm from the FCA Register.

3.4 Annual Return of Information about Firms

- 3.4.1 Within 4 months of the end of December each year the Law Society of Scotland will supply the FCA with a list of its exempt professional firms to include:
- (i) the number of exempt professional firms; and
 - (ii) the number of members carrying on exempt regulated activities in the relevant exempt professional firms.

3.5 Information about exempt regulated activities

- 3.5.1 Within 4 months of the end of December each year the Law Society of Scotland should provide the FCA with a report about the range and scope of exempt regulated activities carried on by its exempt professional firms, including information about the exempt regulated activities carried on in different areas of legal practice.

3.6 Periodic statements and committee minutes covering exempt professional firms

- 3.6.1 Upon reasonable request the Law Society of Scotland will provide the FCA with a copy of any periodic or occasional statements required under the Law Society of Scotland's rules or a committee minute relating to a member's conduct of exempt regulated activities.

3.7 Information on investigations and disciplinary proceedings

- 3.7.1 The FCA will notify the Law Society of Scotland immediately when the FCA commences an investigation into the activities of an exempt professional firm or a member performing functions in relation to exempt regulated activities.
- 3.7.2 The Law Society of Scotland will immediately inform the FCA if it commences an investigation or makes a referral for disciplinary proceedings in relation to apparent breaches of rules made under section 332 of the Act.

SECTION 4: PROVISION OF INFORMATION ABOUT LAW SOCIETY OF SCOTLAND, ITS RULES, SYSTEMS AND PROCEDURES

4.1 Information about the Law Society of Scotland' regulatory functions

- 4.1.1 Within 4 months of the end of December each year, the Law Society of Scotland should provide the FCA with a report about how the Law Society of Scotland has exercised its regulatory functions over the past year and how it intends to exercise its regulatory functions for the forthcoming year commencing 1 January.

4.2 Notice of intended changes to DPB Rules

- 4.2.1 The Law Society of Scotland acknowledge that any changes to its Rules made under section 332(3) require the approval of the FCA.
- 4.2.2 Law Society of Scotland should provide the FCA with reasonable notice of any proposed rule changes relating to any of the following matters in so far as they affect its members' conduct of exempt regulated activities:
- (i) arrangements and procedures for handling complaints from clients about members;
 - (ii) mandatory PII requirements; and

- (iii) training, competence and qualification requirements.

4.3 Notice of FCA policy initiatives affecting Law Society of Scotland members carrying on the conduct of exempt regulated activities

- 4.3.1 The FCA agrees that Law Society of Scotland should receive an early indication of any policy initiatives or proposed consultations which are likely to have an effect on the exempt regulated activities carried on by Law Society of Scotland's members.

4.4 Annual Report of Law Society of Scotland

- 4.4.1 The Law Society of Scotland should provide the FCA with a copy of its annual report as soon as it is available.

SECTION 5: COMPLAINTS ABOUT EXEMPT REGULATED ACTIVITIES AND INFORMATION ABOUT ARRANGEMENTS FOR REDRESS

5.1 Complaints handling arrangements concerning exempt regulated activities

- 5.1.1 The Law Society of Scotland will maintain appropriate and effective arrangements for handling complaints from clients about exempt regulated activities.
- 5.1.2 The Law Society of Scotland will notify the FCA if it makes a change to its procedures for handling complaints about its exempt professional firms' conduct of exempt regulated activities.

5.2 Generic information and statistics on the Law Society of Scotland's complaints handling arrangements and PII arrangements.

- 5.2.1 Within 4 months of the end of December each year, the Law Society of Scotland will provide the FCA with information about the operation of the Law Society of Scotland's arrangements for handling complaints from clients relating to exempt regulated activities to include:
 - (i) the number of complaints received;
 - (ii) the number of clients affected;
 - (iii) the outcome of complaints; and
 - (iv) details of any information which may become available about professional indemnity claims arising from members' conduct of exempt regulated activities.

SECTION 6: THE LAW SOCIETY OF SCOTLAND' REGULATORY FUNCTIONS

6.1 The Law Society of Scotland' regulatory functions

- 6.1.1 The Law Society of Scotland will co-operate with the FCA, to the extent that it may reasonably be required, in respect of any review the FCA may undertake of the Law Society of Scotland's regulatory functions that come within the FCA's remit.

PART 3: AUTHORISED PROFESSIONAL FIRMS

SECTION 7 : AUTHORISED PROFESSIONAL FIRMS

- 7.1 The FCA and the Law Society of Scotland acknowledge that confidential information about some activities of authorised professional firms or approved persons may only be disclosed between themselves where the Law Society of Scotland or the FCA considers that such disclosure is in the public interest or is otherwise permitted under the Gateways Regulations.
- 7.2 The Law Society of Scotland acknowledges that under Rule 2.3 of IPRU(INV), an authorised professional firm must maintain adequate PII cover and that compliance with the Law Society of Scotland's Rules on PII cover from time to time in force is deemed compliant with Rule 2.3. The Law Society of Scotland will inform the FCA as soon as reasonably practicable if it makes any changes to the PII arrangements which apply to authorised professional firms.
- 7.3 The Law Society of Scotland will immediately provide the FCA with relevant information about authorised professional firms that is likely to be of material concern to the FCA. This information includes but is not limited to:
- (i) circumstances suggesting to the Law Society of Scotland that an approved person or an authorised professional firm is not a fit and proper person;
 - (ii) information that the Law Society of Scotland receives which indicates that consumers may be at risk;
 - (iii) the commencement of an investigation by the Law Society of Scotland into any activities of an authorised professional firm where those activities may also affect the firm's conduct of regulated activities;
 - (iv) details of any referral of an authorised professional firm for disciplinary proceedings;
 - (v) any adverse findings, fines or other penalty imposed as a result of disciplinary proceedings;
 - (vi) circumstances which give rise to a reasonable suspicion that money laundering or financial crime has taken place in connection with the carrying on of regulated activities by an authorised professional firm.
- 7.4 The Law Society of Scotland acknowledges that under CASS 7.1.15R, an authorised professional firm must comply with the rules of the Law Society of Scotland concerning client money. Within 4 months of the end of December each year, the Law Society of Scotland will provide a report to the FSA about the Law Society of Scotland's supervisory functions in relation to its client money rules over the preceding year, to include any action taken following the exercise of its supervisory functions in relation to an authorised professional firm.
- 7.5 The FCA will give the Law Society of Scotland an early indication of any policy changes that are likely to have an effect on authorised professional firms.
- 7.6 The FCA will immediately give the Law Society of Scotland any information about any authorised professional firm that is likely to be of material concern to the Law Society of Scotland.
- This information includes but is not limited to:
- (i) the commencement of any investigation;
 - (ii) the results of any disciplinary or enforcement action; and
 - (iii) any concerns regarding the fitness and propriety of an approved person or an authorised professional firm.

PART 4: MISCELLANEOUS

SECTION 8: REVIEW OF THIS MoU

- 8.1 The FCA and the Law Society of Scotland will review this MoU regularly and consult each other with a view to improving its effectiveness and to resolve any difficulties.

SECTION 9: DATE OF COMING INTO FORCE OF THIS MoU

- 9.1 This MoU will come into effect when it is signed by both parties.
9.2 This MoU supersedes any previous memorandum of understanding between the FCA (or any of its predecessor bodies) and the Law Society of Scotland.

SECTION 10: PUBLICATION

- 10.1 The FCA and the Law Society of Scotland agree to publish this MoU on their respective websites.

SECTION 11: THE SHARED INTELLIGENCE SERVICE

- 11.1 The Law Society of Scotland confirms that it will provide information to the FCA on the outcome of any disciplinary proceedings that will enable the FCA to include the relevant names on SIS.

SCHEDULE

Contact at the FCA: Michael Ross, Financial Conduct Authority, 1st Floor, Quayside House, 127 Fountainbridge, Edinburgh, EH3 9QG. Tel: 0131 301 2023. Email: michael.ross@fca.gov.uk

Contact at the Law Society of Scotland: David Cullen, Law Society of Scotland, 26 Drumsheugh Gardens, Edinburgh, EH3 7YR. Tel: 0131 476 8160. Email: DavidCullen@lawscot.org.uk

Signed on behalf of the Financial Conduct Authority

on 24th of March 2013



Christopher Woolard
Director, Policy, Risk and Research Division

Signed on behalf of the Law Society of Scotland

on 21st of March 2013



Lorna Jack
Chief Executive