

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE FINANCIAL CONDUCT AUTHORITY (FCA)
AND
THE ROYAL INSTITUTION OF CHARTERED SURVEYORS**

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 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors to take any action which would otherwise be prohibited by law.
- 1.1.4 The FCA and the Royal Institution of Chartered Surveyors agree that information provided to the FCA by the Royal Institution of Chartered Surveyors and vice versa under the information sharing provisions of this MoU and which constitutes confidential information about the affairs of the Royal Institution of Chartered Surveyors may be shared by the FCA with the Complaints Reviewer (defined below).

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;

“client” means:

- a) a person who uses, or has used, any of the services provided by a member of the Royal Institution of Chartered Surveyors in the course of carrying on exempt regulated activities (including, where the member of the Royal Institution of Chartered Surveyors 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;

“complaint” includes any expression of dissatisfaction;

“Complaints Reviewer” means the person or persons nominated and/or employed by the Royal Institution of Chartered Surveyors from time to time for the purposes of complying with clause 5.1.1;

“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 Bye-Laws, Regulations and any Rules of the Royal Institution of Chartered Surveyors;

“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 Royal Institution of Chartered Surveyors;

“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 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors means a person who is entitled to carry on the practice of that profession and, in practising it, is subject to rules of the Royal Institution of Chartered Surveyors;

“non-mainstream regulated activity” means a regulated activity (as defined in the FCA’s Handbook of Rules and Guidance) in relation to which the conditions of PROF 5.2.1R are satisfied;

“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 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors; and
 - (ii) in practising it is subject to the rules of the Royal Institution of Chartered Surveyors

“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 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors' 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 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors' 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 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors reasonable cause to believe that the interests of clients are or may be at risk;
- (iii) Information giving the Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors 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 surveyor practice.

3.6 Periodic statements and committee minutes covering exempt professional firms

- 3.6.1 Upon reasonable request the Royal Institution of Chartered Surveyors will provide the FCA with a copy of any periodic or occasional statements required under the Royal Institution of Chartered Surveyors' 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 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors 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 ROYAL INSTITUTION OF CHARTERED SURVEYORS, ITS RULES, SYSTEMS AND PROCEDURES

4.1 Information about the Royal Institution of Chartered Surveyors' regulatory functions

- 4.1.1 Within 4 months of the end of December each year, the Royal Institution of Chartered Surveyors should provide the FCA with a report about how the Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors acknowledge that any changes to its Rules made under section 332(3) require the approval of the FCA.

- 4.2.2 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors members carrying on the conduct of exempt regulated activities

- 4.3.1 The FCA agrees that Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors' members.

4.4 Annual Report of Royal Institution of Chartered Surveyors

- 4.4.1 The Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors will maintain appropriate and effective arrangements for handling complaints from clients about exempt regulated activities.
- 5.1.2 The Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors' complaints handling arrangements and PII arrangements.

- 5.2.1 Within 4 months of the end of December each year, the Royal Institution of Chartered Surveyors will provide the FCA with information about the operation of the Royal Institution of Chartered Surveyors' 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 ROYAL INSTITUTION OF CHARTERED SURVEYORS' REGULATORY FUNCTIONS

6.1 The Royal Institution of Chartered Surveyors' regulatory functions

- 6.1.1 The Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors' 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 Royal Institution of Chartered Surveyors acknowledge that confidential information about some activities of authorised professional firms or approved persons may only be disclosed between themselves where the Royal Institution of Chartered Surveyors or the FCA considers that such disclosure is in the public interest or is otherwise permitted under the Gateways Regulations.
- 7.2 The Royal Institution of Chartered Surveyors acknowledges that under Rule 2.3 of IPRU(INV), an authorised professional firm must maintain adequate PII cover and that compliance with the Royal Institution of Chartered Surveyors' Rules on PII cover from time to time in force is deemed compliant with Rule 2.3. The Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors that an approved person or an authorised professional firm is not a fit and proper person;
 - (ii) information that the Royal Institution of Chartered Surveyors receives which indicates that consumers may be at risk;
 - (iii) the commencement of an investigation by the Royal Institution of Chartered Surveyors 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.
 - (vii) information on the prohibition by the Royal Institution of Chartered Surveyors of an authorised professional firm from carrying on non-mainstream regulated activity.
- 7.4 The FCA will give the Royal Institution of Chartered Surveyors an early indication of any policy changes that are likely to have an effect on authorised professional firms.
- 7.5 The FCA will immediately give the Royal Institution of Chartered Surveyors any information about any authorised professional firm that is likely to be of material concern to the Royal Institution of Chartered Surveyors.
- 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 Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors.

SECTION 10: PUBLICATION

10.1 The FCA and the Royal Institution of Chartered Surveyors agree to publish this MoU on their respective websites.

SECTION 11: THE SHARED INTELLIGENCE SERVICE

11.1 The Royal Institution of Chartered Surveyors 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 Royal Institution of Chartered Surveyors: Jennifer Watson, 12 Great George Street, London, SW1P 3AD. Tel: 0207 695 1627. Email: jwatson@rics.org

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 Royal Institution of Chartered Surveyors

on 11 of March 2013



Steven Gould

RICS Director of Regulation

