

MEMORANDUM OF UNDERSTANDING BETWEEN THE FINANCIAL SERVICES AUTHORITY AND THE FINANCIAL SERVICES COMPENSATION SCHEME

INTRODUCTION

1. The purpose of this Memorandum of Understanding (MoU) is to provide a framework for the relationship between the Financial Services Authority (the FSA) and the Financial Services Compensation Scheme Ltd (FSCS). It reflects the fact, that, while each of these bodies is operationally independent, and has distinct functions one from the other, they need to co-operate and communicate constructively with each other in order to carry out their functions effectively.
2. FSCS has been set up by the FSA in accordance with Part XV of the Financial Services and Markets Act 2000 (the Act) as the manager of a single scheme to provide compensation in the event of a relevant person being unable, or likely to be unable to meet claims against it.

FSCS' Objective

3. This is to provide fair, sensible and effective compensation arrangements for consumers of regulated financial services in the United Kingdom in accordance with the rules made by the FSA.

FSA's Responsibilities

4. The FSA will ensure that FSCS is at all times capable of exercising its functions by:
 - a) Ensuring that any rules made by the FSA can be administered effectively.
 - b) Ensuring that the rules do not unreasonably constrain the FSCS' ability to raise sufficient funds to meet the costs incurred in discharging its responsibilities under the Act and under the rules.
 - c) Notifying the FSCS of any circumstances which may impact on its ability to meet the objective of administering the rules in a fair and cost effective manner.
 - d) Appointing appropriate persons to the FSCS' Board, ensuring that the terms of their appointments are such as to secure their independence from the FSA in the operation of FSCS.

FSCS' Responsibilities

5. FSCS is responsible for:
 - a) The effective operation of a single compensation scheme and for overseeing the orderly wind-down of work to which the Rules of the old schemes apply;
 - b) Making and implementing procedures to enable FSCS to operate its functions;
 - c) Making levies for management expenses, compensation costs and establishment costs as are required under the Rules to enable it to carry out its role.

- d) The use of its resources in the execution of its objective and functions in an efficient and economic way.
- e) Reporting to the FSA, as described in this MoU, on the discharge of its functions.
- f) Publishing information on its operation.

FSCS' Powers of Management

6. FSCS will manage itself in accordance with the Rules and in accordance with the procedural requirements it establishes to enable it to discharge its functions effectively.

General Co-operation

7. Both the FSA and FSCS recognise that close co-operation, assistance and communication with each other is essential. In the interests of both consumers of financial services and the financial services industry, FSA and FSCS will seek to maintain strong and constructive relationships with each other in order to ensure the FSCS meets its objectives.

8. The FSA and FSCS undertake to share information and to keep each other informed of any issues considered relevant to their respective roles. They will also endeavour to avoid causing difficulties for one another, whether by a failure to communicate effectively, failure to identify a relevant consideration, or otherwise.

9. The FSA and FSCS will meet regularly, at the appropriate levels of seniority, to discuss matters of mutual concern and will, wherever possible and appropriate, give each other advance warning of relevant issues.

Information Sharing

10. Both the FSA and FSCS recognise that identification of situations where there is entitlement to compensation is an important source of regulatory information about hazards to consumers. FSCS understands the need for the FSA to have timely access to certain types of information, and the FSA acknowledges the need to give due consideration to information provided by FSCS and to take appropriate action. On the FSA's part, it agrees to keep the FSCS informed in as timely a manner as is reasonably practicable of any regulatory and market developments that may impact on the operation of FSCS.

11. The FSA does not, in the normal course of events, expect FSCS to provide it with detailed information about individual cases except in the circumstances specified in the paragraphs below. FSCS will retain discretion over what (and when) such information is provided.

12. The FSA and FSCS will, subject to any relevant constraints, do their best to inform each other at an early stage as possible, of any cases or issues which are likely to become the subject of public or Parliamentary concern, and each will provide the other with such further information on handling and other action as may be necessary or reasonably requested.

13. FSCS will inform the FSA of any actual or likely material litigation either against it or on its behalf, and will keep the FSA informed, where appropriate, of how it intends to deal with such actions.

Consultation

14. FSCS agrees to give reasonable time to allow the FSA to provide considered comments on draft statements/text that FSCS wants to make public on matters other than those concerning its routine operation (eg announcements of defaults).

15. The FSA agrees to consult in good time with FSCS on any proposed rule amendments and any review of the rules or other changes that may impact on FSCS' processes that may occur from time to time. This may, for example, include those changes necessitated by the requirements to comply with the implementation of EC Directives or amendments to UK legislation.

Funding, Levying and Treasury management

16. The FSA will set a limit on FSCS' management expenses for each financial year by COMP rules, before the end of the preceding financial year. So that the FSA can provide full consultation on the limit, FSCS will provide the FSA with its proposed management expenses budget and plan for review and discussion in accordance with an agreed reporting timetable for each year. The FSA and FSCS will co-ordinate their respective publications of the consultation paper on the management expenses limit and FSCS budget.

17. FSCS will advise the FSA as soon as practical should circumstances change so that it is unable to carry out its functions within the current management expenses limit. FSCS will not incur expenditure in excess of its agreed budget unless there is unavoidable cause about which it will keep the FSA informed as early as possible.

18. FSCS will raise its levies in accordance with the COMP rules so that it has sufficient funds to cover its management expenses, and, in respect of compensation costs, provide continuity of valid payments to claimants. Proposed levies will usually be announced by FSCS at the beginning of each financial year.

19. FSCS and the FSA recognise that similar tariff data are required by them for levying and fee raising purposes respectively and, in the interests of efficiency and cost effectiveness, have made arrangements for a single data collection source to be established, and levy invoicing and cash collection processes to be covered by the FSA as agent for FSCS through an Agency Agreement, dated [October 2001].

20. FSCS will keep the FSA informed of its treasury management policies which cover the handling of cash balances and other invested funds.

Annual Business Plan and Budget

21. In accordance with a timetable to be agreed for each year, FSCS agrees to allow the FSA time to provide considered comments on drafts of its annual business

plan including budget proposals and, subject to the paragraphs below, will manage itself in accordance with the financial budget approved by the FSA.

22. FSCS will obtain the FSA's approval for any proposed significant changes to its overall agreed operational budget should these become apparent, as set out in paragraphs 16 & 17.

23. FSA will respond to all budget related requests expeditiously.

Reports/Accountability

24. FSCS will prepare and publish an Annual Report and accounts to the FSA on the discharge of its functions and on its operation covering each financial year. The report will be made within four months of the end of the financial year reported on. FSCS agrees to give reasonable time to allow FSA to provide considered comments on drafts of its Annual Report and accounts.

25. FSCS' financial year will end on 31st March.

26. The annual report will give details of the exercise by FSCS of its responsibilities and will:

- a) Include a statement in accordance with the rules regarding its finances and
- b) Include a statement of transactions of each FSCS sub-scheme during the year between the relevant contribution groups.

27. In addition to the information outlined above, FSCS will provide the FSA with quarterly reports in a form to be agreed from time to time that will include a commentary on FSCS' performance against its management plans and its budget together with statistical information about its compensation handling activities including the number of claims by type of business received, decisions taken and compensation costs. FSCS will aim to submit this report within eight weeks of each quarter's end.

Record Keeping and Document Retention

28. FSCS will make and retain such records to show and explain its transactions and which will enable its financial position to be determined with reasonable accuracy at any time.

29. FSCS will keep records relating to all claims for a minimum period of six years.

Notification of Certain Appointments

30. FSCS will notify the FSA in writing of the appointment of any person as its Chief Executive or Company Secretary, or of any change in auditors as soon as possible and in any event within seven days.

Disaster Recovery

31. FSCS will keep the FSA informed about the disaster recovery arrangements to be adopted in the event that the FSCS' premises cannot be occupied.

Business Contingency

32. FSCS will ensure that at all times FSA is kept informed of its procedures for coping with a significant failure which is beyond the capability of the existing dedicated staff and resources.

Review of MOU

33. The FSA and FSCS will review the operation of the MoU from time to time. This MoU will be effective from N2.