

MEMORANDUM OF UNDERSTANDING
Between
The Serious Fraud Office
And
The Financial Services Compensation Scheme

Introduction

1. The Serious Fraud Office (SFO) and the Financial Services Compensation Scheme (FSCS) ("the parties") are committed to working together in the public interest to achieve the appropriate outcomes in the investigation and prosecution of serious or complex fraud and bribery and corruption offences. In support of that aim this Memorandum of Understanding ("MoU") sets out the framework for effective liaison and communications between the SFO and the FSCS.
2. The aims of this MoU include:
 - a. To assist co-operation and co-ordination between the parties in the performance of their respective statutory functions in the public interest so far as such assistance is lawful; and
 - b. To provide arrangements for co-operation and the exchange of useful information.

Legal status and effect

3. Nothing in this MoU shall, or is intended to:
 - a) create any legal or procedural right or obligation which is enforceable by either of the parties against the other; or
 - b) create any legal or procedural right or obligation which is enforceable by any third party against either of the parties, or against any other third party; or
 - c) prevent either of the parties from complying with any law which applies to them; or
 - d) fetter or restrict in any way whatsoever the exercise of any discretion which the law requires or allows the parties to exercise; or
 - e) create any legitimate expectation on the part of any person that either of the parties to this Memorandum of Understanding will do any act (either at all, or in any particular way, or at any particular time) or will refrain from doing any act.
4. Nevertheless, the parties are genuinely committed to pursuing the aims and purposes of this MOU in good faith and intend to act in accordance with its terms on a voluntary basis.

Roles and Responsibilities of the SFO

5. The SFO was set up in April 1988 following the report of the Fraud Trials Committee under the late Lord Roskill.

6. The SFO's status and powers derive from the Criminal Justice Act 1987 (CJA 1987). Section 1(3) of that Act provides that the Director may investigate any suspected offence which appears to him on reasonable grounds to involve serious or complex fraud (including offences of bribery and corruption).
7. In considering whether to authorise an investigation the Director will take into account the actual or intended harm that may be caused to:
 - the public or
 - the reputation and integrity of the UK as an international financial centre or
 - the economy and prosperity of the UK

and whether the complexity and nature of the suspected offence warrants the application of the SFO's specialist skills, powers and capabilities to investigate and prosecute.

8. The principal power is contained in section 2 of the CJA 1987 which gives the Director, or a designated member of staff, the power to require a person or entity to provide information to the SFO for the purpose of an investigation.

Roles and Responsibilities of the FSCS

9. The FSCS was established, as required by the Financial Services and Markets Act 2000 (FSMA), as a limited company. As scheme manager the FSCS is responsible for compensation arrangements for the Financial Conduct Authority (FCA)-regulated activities under rules made by the FCA. It also administers the scheme protecting deposit and insurance provision in accordance with rules made by the Prudential Regulation Authority (PRA).
10. The FSCS, as scheme manager, is independent from, but accountable to, both the FCA and the PRA for the effective operation of the scheme. The day-to-day operation of the Scheme is the responsibility of the FSCS and its board.
11. FSCS is responsible for establishing and implementing procedures to enable FSCS to perform its relevant functions, raising levies for management expenses and compensation costs for the use of its resources in an efficient and economic way and for reporting to the FCA on the discharge of its functions.
12. The FSCS, as a major creditor of failed businesses, also has a responsibility to seek to recover as much as it can from the estates of those businesses or from third parties responsible for consumers' losses in order to offset the costs of compensation. Further details on this are set out in the FSCS' 2020s Strategy.
13. Also set out in the FSCS' 2020s Strategy is the FSCS's responsibility to share what it learns about the causes and consequences of failures with government and regulators. This is done with the ambition of contributing to improving regulation and preventing future failures.

Information sharing

14. The SFO and FSCS agree to share information to allow them to fulfil their respective responsibilities.
15. The exchange of information between the FSCS and the SFO will be compliant with the law including, but not limited to, the relevant provisions of:
 - a. The General Data Protection Regulation (GDPR) and, as later saved by the EU Withdrawal Bill, the Data Protection Act 2018, any relevant codes or conduct or certifications along with any related or analogous legislation;
 - b. Section 3(5) of the Criminal Justice Act 1987 ('CJA') for information provided by the SFO. The FSCA is a competent authority for the purposes of subsection (5) having been established pursuant to s212(1) FSMA as a compensation scheme manager.
16. The SFO agrees that, where it requires confidential information or documents from FSCS in order to further its investigations, it will serve a notice upon FSCS under section 2(2) or (3) CJA. Before serving such a notice upon FSCS the SFO will inform FSCS and consult FSCS with regard to the nature and scope of the information or documents required.
17. If the SFO representatives cannot reach agreement with their counterparts at the FSCS with regard to the parameters of a section 2(2) or (3) notice matters will be escalated for discussion by the FSCS's Chief Counsel and the SFO's General Counsel as detailed in the section "Practical Exchange of Information" below.
18. Where it is lawful, and in the public interest to do so, the parties agree to disclose information to the other:
 - a. To enable the assessment of risk to the public such as to:
 - i. Minimise the risk of financial default;
 - ii. Minimise the risk of fraud or other criminality; and
 - iii. Identify the risk of financial failure.
 - b. So that alleged criminality, misconduct or other failures are properly investigated and decided upon;
 - c. To enable the proper processing of claims or applications for redress or compensation of any description; and
 - d. For the purposes of regulatory, disciplinary or other legal proceedings, whether in public or not;

provided that the recipient is reasonably considered able to take regulatory or other proper action upon the information.

19. The recipient of information received from the other party will:

- a. Protect the confidentiality and sensitivity of all unpublished regulatory and other confidential information received;
- b. Keep the information secure;
- c. Use the information only for proper purposes, such as regulatory, disciplinary or other legal investigations or proceedings; and
- d. Liaise or co-operate where appropriate to avoid action that prejudices or may prejudice an investigation by another party or person.

20. The parties agree to ensure that disclosures to the other party are lawful.

21. The disclosing party also agrees to notify the recipient of:

- a. Any restrictions on the use to which the information can be put; and
- b. Any restrictions which apply to the onward disclosure of the information; and
- c. In the absence of such notification the receiving party will assume that there are no further restrictions except those which apply as a matter of law.

22. The parties agree that, where one party has received information from the other, they will seek consent before passing the information on to a third party, subject to duties under any applicable laws.

Practical Exchange of Information

23. Where matters of policy, principle or other joint interest not relating to intelligence or a specific case need to be raised they will be discussed in the first instance between the Chief Counsel for the FSCS and General Counsel for the SFO.

24. Where the SFO and FSCS wish to communicate in respect of matters under consideration by the SFO's Intelligence Division the contact at the SFO will be the Chief Intelligence Officer or a member of that division. They will liaise directly with the Chief Counsel for the FSCS.

25. Where the SFO and the FSCS wish to communicate in respect of ongoing matters regarding specific investigations or prosecutions the contact at the SFO will be the relevant Head of Division and case controller. They will liaise directly with the Chief Counsel for the FSCS.

26. Where initial case contacts details are not known by the FSCS the Head of External Engagement and Policy for the SFO can provide the FSCS with this information.

27. Relevant contacts for each organisation for the purposes of this MoU are listed in a confidential annex:

Additional Assistance

28. Either party may request additional co-operation in sharing subject-matter expertise, supplying witness statements, expert advice or oral evidence for use or potential use in court or tribunal proceedings. Such requests shall be given due consideration.

Security and assurance

29. The parties agree to:

- a) Only use the data for the purposes for which they have received it;
- b) Store data securely;
- c) Ensure that only people who have a genuine business need to see the data will have access to it;
- d) Report data losses or wrongful disclosure to the relevant points of contact as detailed in the section “Practical Exchange of Information” above;
- e) Only hold data for as long as necessary;
- f) Destroy data in line with retention policies; and
- g) Provide assurance that they have complied with these principles, upon request.

Freedom of Information

30. The FSCS is not bound by the Freedom of Information Act 2000. However, when there is a request for information from a member of the public under relevant freedom of information law (which is binding on the party receiving it or with which the receiving party wishes to voluntarily comply), the party receiving the request will inform the other party and invite representations on the potential impact of disclosure.

Costs/Charges

31. No charges will be made in relation to the supply of information by either party.

Resolving Problems

32. Problems that arise between the parties will be resolved through discussion by the relevant points of contact as detailed in the section “Practical Exchange of Information” above, with escalation to more senior managers where necessary.

Reporting and review arrangements

33. This MoU will remain in force until terminated by either party.

34. The signatories of the parties will review the operation of the MoU and the effectiveness of co-operation and co-ordination on an annual basis.

35. Any changes to this MoU must be agreed in writing.

Transparency

36. Save for the confidential annex referred to at paragraph 27, this MoU is a public document and the parties may publish it as they separately see fit.

Signatories

**Sara Lawson QC, General Counsel
for and on behalf of the Serious Fraud
Office**

Date: 3rd November 2020

**James Darbyshire, Chief Counsel for and
on behalf of the Financial Services
Compensation Scheme**

Date: 4th November 2020