

Memorandum of Understanding between the Bar Standards Board and Financial Services Compensation Scheme (FSCS)

Introduction

1. This Memorandum of Understanding (MoU) sets out a framework for how the Bar Standards Board and the Financial Services Compensation Scheme ('the parties') will work together in the public interest to ensure best practice and transparency by regulated or authorised entities and individuals when representing customers who bring claims for compensation to the FSCS.

Purpose

2. The purpose of this MoU is to:
 - a. put in place clear arrangements and practices that will foster an effective and cooperative working relationship between the BSB and FSCS; and
 - b. provide a framework for the lawful flow of information between the parties.

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 in this MoU 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.

Role of the FSCS

5. 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").

6. 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.
7. FSCS is responsible for establishing and implementing procedures to enable FSCS to perform its relevant function, raising levies for management expenses and compensation costs for the use of its resources in an efficient and economical way and for reporting to the FCA on the discharge of its function.
8. The FSCS, as a major creditor of failed financial services' businesses, also has a responsibility to seek to recover as much as it can from the estates of those businesses and/or from third parties responsible for consumers' losses in order to offset the costs of compensation.
9. FSCS also has a strategic objective 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, preventing future firm failures and preventing consumer detriment.

Role of the Bar Standards Board

10. The BSB is the independent regulatory body established by the General Council of the Bar for the regulation of legal services by barristers and BSB authorised entities in England and Wales¹. The BSB's powers arise from various statutes and regulations including the Legal Services Act 2007 (the "Act").
11. The primary functions of the BSB are to regulate the Bar so as to promote high standards of practice and safeguard clients and the public interest.
12. In discharging these regulatory functions, the BSB is bound by Regulatory Objectives set out in the Legal Services Act 2007, which are:
 - protecting and promoting the public interest;
 - supporting the constitutional principle of the rule of law;
 - improving access to justice;
 - protecting and promoting the interests of consumers;
 - promoting competition in the provision of services;
 - encouraging an independent, strong, diverse and effective legal profession;
 - increasing public understanding of citizens' legal rights and duties;
 - promoting and maintaining adherence to the professional principles²; and
 - promoting the prevention and detection of economic crime.

¹ Under the Legal Services Act 2007 (the Act), the General Council of the Bar (or "Bar Council") is an Approved Regulator (as defined by the Act) for Barristers in England and Wales. The Bar Council must under the Act delegate responsibility for all regulatory functions and arrangements to an independent body and has duly constituted the Bar Standards Board (BSB) for this purpose.

² The professional principles are:

- that authorised persons should act with independence and integrity;
- that authorised persons should maintain proper standards of work;
- that authorised persons should act in the best interests of their clients;
- that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice; and
- that the affairs of clients should be kept confidential.

Information sharing

13. Where it is lawful, and in the public interest to do so, the BSB and FSCS agree to disclose information to the other to enable and support the functions and objectives each party delivers in the public interest.
14. The envisaged information sharing purposes include:
 - a. The FSCS will provide the BSB with information it reasonably requires to enable it to discharge its regulatory obligations either generally or in relation to the behaviour of individual barristers or regulated entities, to ensure that: alleged misconduct or other perceived failures can be properly investigated and decided upon; to support the BSB in the formulation and updating of supervisory and enforcement policy and practices in the public interest, and; to inform authorisation decisions.
 - b. The BSB will provide the FSCS with information that it reasonably requires to enable the proper processing of claims or applications for redress or compensation of any description and to enable the assessment of risk to the public, including where customers are represented by individuals or entities regulated by the BSB.
15. Other purposes may also include further lawful disclosure of the information such as to persons under investigation, witnesses, legal advisers, other regulators, professional bodies, prosecuting bodies and law enforcement agencies including the Police.
16. The exchange of information between the BSB and FSCS will be compliant with law including, but not limited to, the UK General Data Protection Regulation (GDPR) and Data Protection Act 2018, common law principles of confidentiality and the Human Rights Act 1998.

Information handling instructions

17. The disclosing party 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.
18. The recipient of information received from the other party will:
 - a. comply at all times with UK data protection legislation and any relevant codes of conduct or certifications;
 - 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.
19. 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 any purposes required by law.
20. The parties agree to:
 - a. only use the data for the purposes for which they have received it;

- b. store the 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” below;
- e. only hold the data while there is a business need to keep it;
- f. destroy the data in line with retention policies; and
- g. upon request, provide assurance that they have complied with these principles.

Practical exchange of information

21. Where matters of policy, principle or general issues arise that the FSCS or BSB think could pose a risk to customers or other joint interests not relating to a specific case, and need to be raised, the relevant points of contact at the BSB will be the Head of Supervision and the Head of Enforcement & Investigations who will liaise directly with the relevant point of contact at the FSCS, namely the Relationship Manager and Head of Service Delivery for the FSCS.

Freedom of information Act 2000 (“FOIA”)

- 22. The FSCS is not subject to the Freedom of Information Act 2000 (FOIA).
- 23. The BSB is not subject to the provisions of the FOIA but is committed to responding to information requests in the spirit of the Act.
- 24. When a request for information is received under 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/liability

25. No charges will be made in relation to the supply of information by either party. Neither party shall be liable to the other for any loss howsoever arising in connection with this agreement in so far as permitted by law.

Resolving issues

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

Reporting and reviewing arrangements

- 27. This MoU will remain in force until terminated by either party.
- 28. The signatories of the parties will use their best endeavours to review the operation of this MoU on an annual basis.
- 29. Any changes to this MoU must be agreed in writing.

Transparency

30. This MoU is a public document, and the parties may publish it as they separately see fit.