

MEMORANDUM OF UNDERSTANDING BETWEEN THE FINANCIAL CONDUCT AUTHORITY ('FCA') AND THE LENDING STANDARDS BOARD ('LSB')

1. SCOPE AND PURPOSE

1.1 The purpose of this Memorandum is to record the framework for co-operation and communication between the FCA and LSB, to the extent permitted by law, in carrying out their respective functions under the Banking Conduct Regime and the Consumer Credit regime (as defined in clause 4.2 (b) (i) below), and the Lending Code.

1.2 This Memorandum is subject to any legal requirement affecting the FCA or the LSB, including contractual obligations.

2. THE FINANCIAL CONDUCT AUTHORITY

2.1 Broadly, under FSMA, the FCA is responsible for:

- (i) regulating standards of conduct in retail and wholesale markets;
- (ii) supervising trading infrastructures that support those markets;
- (iii) the prudential supervision of firms that are not PRA-regulated; and
- (iv) the functions of the UK Listing Authority (UKLA).

2.2 It has a single strategic objective to ensure that the markets for financial services function well. Three operational objectives support this: securing an appropriate degree of protection for consumers (including wholesale consumers); protecting and enhancing the integrity of the UK financial system; and promoting effective competition in the interests of consumers in the markets for financial services.

3. THE LENDING STANDARDS BOARD

3.1 The Lending Code is a self-regulatory code covering good practice in relation to loans, credit and charge cards and current account overdrafts. The Lending Code has not been reviewed by the FCA and is not FCA Confirmed Industry Guidance.

3.2 The key objectives of the LSB are:

- (a) to assist subscribing firms to interpret and meet the requirements of the Lending Code;
- (b) to monitor and enforce compliance with the Code and take disciplinary action for material breaches; and
- (c) to identify any gaps and deficiencies in the Code that could lead to consumer detriment and to advocate change.

3.3 The LSB's monitoring role and enforcement powers derive from its contract with each subscribing firm.

3.4 Firms which subscribe to the Lending Code include all the major banks, those building societies undertaking unsecured lending and the majority of other providers of current account overdrafts, personal loans, and credit cards to personal and micro-enterprise customers in the UK. In addition, firms undertaking the collection of regulated consumer credit debt may also subscribe to the Lending Code.

3.5 The Lending Code contains key commitments and detailed notes on how customers should be dealt with through the whole product life cycle, from marketing and account opening, maintenance and the provision of information on changes to terms and conditions and interest rates. Important protection is also included to help when something goes wrong, including when a customer is experiencing financial difficulties.

3.6 The Lending Code is owned by the three sponsoring bodies – the British Bankers' Association, Building Societies Association and The UK Cards Association. The LSB has the power to initiate a review of the Lending Code but in line with the concept of self-regulation the sponsoring bodies control the content of the Lending Code.

4. AREAS OF OVERLAP BETWEEN LSB AND FCA

4.1 The FCA has powers derived from primary and secondary legislation. The LSB has powers derived from contracts with subscribing firms to comply with rules made under voluntary industry arrangements.

4.2 The FCA and the LSB have a mutual regulatory interest in the following key areas, (referred to in this Memorandum as 'areas of overlap':

a. Payment services

- i. Under the Payment Services Regulations 2009 (PSRs), the FCA is the competent authority for Authorised and Registered Payment Institutions (firms providing payment services). The PSRs implement Directive 2007/64/EC of the European Parliament and of the Council on payment services in the internal market (PSD). The PSRs set out requirements for information to be provided to payment service users, and specific rules on the respective rights and obligations of payment service users and providers. These requirements are applicable to all payment service providers, including banks, building societies and credit card issuers. Payment services relating to (among other things) payment accounts fall within the scope of the PSRs; payment accounts can include current accounts, credit card accounts and current account mortgages.

- ii. Section 6 of the Lending Code outlines the self-regulatory obligations of subscribing firms in respect of credit cards, including in particular in relation to unauthorised transactions.
- b. Providing appropriate information and treating customers fairly
 - i. The FCA also has the power under FSMA to make rules and guidance. FCA rules are binding on regulated firms. Using this power, the FCA has made the Banking Conduct of Business sourcebook (known as BCOBS) and the Consumer Credit sourcebook (known as CONC).

BCOBS applies to firms with respect to the activity of accepting deposits and connected activities, to the extent that it does not overlap with the harmonised provisions of the PSD. CONC is the specialist sourcebook for credit-related regulated activities, setting out obligations for firms operating in this area and building on the requirements under the Consumer Credit Act 1974 (CCA).

Under FSMA, the FCA has also made the Principles for Businesses ("the Principles"), which are a general statement of the fundamental obligations of firms under the regulatory system. Principle 6 requires a firm to pay due regard to the interests of its customers and treat them fairly. Principle 7 requires a firm to communicate information to its clients in a way which is clear, fair and not misleading.

The conduct of business provisions of the PSRs, BCOBS and the Principles are known collectively as the Banking Conduct Regime.

The conduct of business provisions of CONC, the Principles and the retained provisions of the CCA are known collectively as the Consumer Credit Regime.
 - ii. The Lending Code sets minimum standards of good practice in relation to, amongst other types of lending products, current account overdrafts. The Lending Code includes a 'Fairness Commitment' under which subscribers commit to act fairly and reasonably in all their dealings with customers by, as a minimum, meeting all the commitments and standards in the Code. The Lending Code further requires subscribers to deal quickly and sympathetically with things that go wrong and to act sympathetically and positively when considering a customer's financial difficulties.
- c. Unfair contract terms
 - i. The FCA has powers to enforce the Unfair Terms in Consumer Contracts Regulations (UTCCRs) 1999, as a qualifying body, and

under the Enterprise Act 2002. The FCA can also enforce breaches of the Consumer Protection from Unfair Trading Regulations 2008 through the exercise of its powers under Part 8 of the Enterprise Act 2002.

ii. The Lending Code provides that all terms and conditions should, when relating to personal lending, reflect the requirements of the UTCCRs.

d. Financial difficulties

i. Financial difficulties is covered by the FCA's high level principles and rules and in particular under Principle 6 (a firm must pay due regard to the interests of its customers and treat them fairly).

Detailed rules and guidance relating to the fair treatment of consumers in financial difficulty are provided in CONC.

ii. The Lending Code's Key Commitments provide that Code subscribers will act sympathetically and positively when considering a customer's financial difficulties. Section 9 of the Lending Code outlines the standards expected of code subscribers when dealing with customers in financial difficulties.

5. INVESTIGATION AND ENFORCEMENT

5.1 The FCA and the LSB recognise the desirability of:

- (a) promoting an approach to monitoring, supervision and enforcement in areas of overlap that is coordinated, transparent, proportionate and responsive to the issue; and
- (b) avoiding undue duplication of investigation and enforcement work in areas of mutual regulatory interest.

5.2 The FCA's approach to enforcement of its PSR and FSMA responsibilities is set out in the Enforcement Guide (EG). The FCA will, where appropriate, take account of the work being performed by the LSB when determining what resources to deploy in supervising and enforcing compliance by Lending Code subscribers with requirements within the FCA's remit.

The LSB undertakes independent monitoring both to assist subscribing firms meet the Lending Code's provisions and to identify areas of non-compliance. When an issue is identified that could potentially require action by either the FCA or the LSB, the two bodies may consult each other to agree which is best placed to take action in the first instance.

5.3 Nothing in this Memorandum fetters the FCA's discretion to take supervisory or enforcement action or to exercise any of its powers in areas of overlap.

6. CO-OPERATION, CO-ORDINATION AND EXCHANGE OF INFORMATION

6.1 The FCA and the LSB will seek to:

- (a) co-operate in a timely way with regard to their respective roles;
- (b) maintain general awareness and understanding of each other's functions;
- (c) share good practice in monitoring and enforcement methodology in areas of overlap; and
- (d) meet as necessary to seek to achieve these benefits, including regular meetings at staff level and annual meeting at senior management level;
- (e) meetings at staff level will take place at least quarterly and more frequently on an ad hoc basis as necessary. These meetings may include discussion of the quality of compliance in areas of overlap and will review progress in dealing with any specific issues that have arisen since the previous regular meeting, to the extent this is compatible with legal restrictions on disclosure.

Exchange of information

6.2 The FCA's ability to disclose information to the LSB is subject to the statutory restrictions (some of which are European law obligations). The co-operation arrangements outlined in this section do not affect or override those restrictions. Subject to those restrictions, the FCA's 'self-help' gateway¹ permits the FCA to exchange information where it is satisfied that the disclosure will assist it to carry out its regulatory functions in relation to the firm or firms concerned and (if the information is covered by one of the single market directives) the disclosure is not in breach of a relevant EU directive.

6.3 The LSB Registration Rules impose a duty of confidentiality on the LSB, but they provide a gateway for confidential information to be passed to the FCA.

6.4 Subject to the above two paragraphs, the FCA and the LSB expect to exchange information as appropriate in connection with the carrying out of their respective responsibilities in relation to banking and consumer credit services. This will include, where relevant:

- (a) the LSB will notify the FCA of information indicating an infringement of an FCA rule or FCA-enforceable regulation in an

¹ Regulation 3 of the FSMA 2000 (Disclosure of Confidential Information) Regulations 2001

area of overlap, where that information becomes apparent to the LSB;

- (b) the LSB will notify the FCA of information held by the LSB which give rise to concerns or potential concerns about an FCA-authorized firm's or payment institution's financial soundness, systems or controls, fitness or propriety or other matter that falls more normally within the scope of the FCA;
- (c) the FCA will, subject to statutory restrictions, notify the LSB of information held by the FCA which the FCA considers may warrant investigation by the LSB; and
- (d) the parties may consult with each other in relation to any proposed FCA or LSB public announcement that may be relevant to the functions of the other party.

7. REVIEW OF MEMORANDUM OF UNDERSTANDING

7.1 The FCA and the LSB will consider formally at least annually as appropriate:

- (a) any issues that have arisen from the operation of this Memorandum;
- (b) the content and application of this Memorandum and any changes which need to be made;
- (c) the exercise of the FCA's and the LSB's respective responsibilities; and
- (d) whether any rules or procedures need to be reviewed for possible change.

7.2 Either the FCA or the LSB may terminate this Memorandum at any time, but will endeavour to give the other body reasonable notice before doing so.

8. PUBLICATION

Copies of this Memorandum will be available on the FCA and LSB websites. The sponsoring bodies for the Lending Code are aware of this Memorandum and have acknowledged its content.

9. SPECIAL CIRCUMSTANCES

Whilst it is intended that the arrangements in this Memorandum should apply generally, it is recognised that some circumstances will require special handling. Nothing in this Memorandum prevents the making of arrangements to meet specific exceptional needs.

Signed by:

For the Financial Conduct Authority

Name: LINDA WOODALL

Position: Director of Mortgages and Consumer Lending

Signature: 

Date: 14/10/14

For the Lending Standards Board

Name: ROBERT SKINNER

Position: Chief Executive

Signature: 

Date: 15/10/14