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**Memorandum of understanding between the Financial Services Authority and the Pensions Regulator**

**6 April 2005 (updated October 2007)**

**MEMORANDUM OF UNDERSTANDING ('Memorandum') BETWEEN  
THE FINANCIAL SERVICES AUTHORITY ('FSA') AND THE PENSIONS  
REGULATOR ('TPR')**

**1. SCOPE AND PURPOSE**

1.1 This Memorandum concerns co-operation and co-ordination between the FSA and the Pensions Regulator in carrying out their respective regulatory responsibilities for the regulation of occupational and personal, including stakeholder, pension schemes.

1.2 Its purpose is to assist co-operation and co-ordination between the FSA and the Pensions Regulator by setting out:

(i) the respective regulatory responsibilities of the FSA and the Pensions Regulator; and

(ii) arrangements for co-operation and the exchange of information.

The arrangements set out in sections 3 and 4 are subject to what is permitted and required by law (including the obligation of each organisation to separately consider each case to which the arrangements will apply).

1.3 The FSA and the Pensions Regulator have a significant number of similar regulatory responsibilities under the Financial Services and Markets Act (FSMA), the Pensions Acts and other legislation. These responsibilities complement each other as they mostly extend to different activities and objectives.

**The FSA's statutory objectives**

1.4 The FSA's objectives are: maintaining confidence in the financial system; promoting public understanding of the financial system; securing the appropriate degree of protection for consumers; and reducing financial crime.

**The Pensions Regulator's statutory objectives**

1.5 The Pensions Regulator's objectives are: protecting the benefits of members of workbased pension schemes; reducing the risk of situations arising that may lead to compensation being payable under the Pension Protection Fund; and promoting, and improving understanding of, the good administration of work-based pension schemes. Work-based pension schemes are occupational pension schemes; personal pension schemes where direct payment arrangements exist in

respect of one or more members of the scheme who are employees; and stakeholder pension schemes.

## **Scope**

- 1.6 The FSA's responsibilities include the regulation of advice on and the sale and marketing of investments such as personal, including stakeholder, pensions and the prudential regulation of pension providers such as insurance companies and friendly societies. The Pensions Regulator regulates work-based pension schemes. It will focus mainly on employers, scheme trustees and managers, and their advisers. There will be some areas of common interest with the FSA in relation to work-based pensions.

## **2. RELEVANT LEGISLATION AND REGULATORY RESPONSIBILITIES**

- 2.1 The key pieces of legislation that govern the FSA's and the Pensions Regulator's responsibilities are set out in Annex A.

- 2.2 The main regulatory responsibilities of the FSA and the Pensions Regulator are summarised below:

### **2.3 The FSA:**

- regulates firms that provide, promote, market, advise on or sell personal, including stakeholder, pensions and annuities – occupational pension schemes are specifically excluded from its remit;
- regulates the establishment, operation and winding-up of personal pension schemes;
- regulates the prudential risks of firms who provide personal, including stakeholder, pensions and annuities;
- has an indirect interest in occupational pension schemes because it regulates firms which provide investments and investment services to occupational pension schemes (e.g. investment managers, insurers selling insurance-based pension products, advice given to scheme trustees on investments);
- is accountable, in a number of significant respects, for the Financial Ombudsman Service (FOS)<sup>1</sup>, which handles complaints about personal, including stakeholder, pensions – FOS shares this complaints handling role with the Pensions Ombudsman;

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<sup>1</sup> It is noted that the Thornton review has recommended that the FOS is merged with PO, so the scope of FOS's role may be subject to change

- is accountable for the Financial Services Compensation Scheme, which covers the liabilities of FSA-authorized firms which provide or advise on personal, including stakeholder, pensions; and
- has a statutory responsibility to promote public awareness and understanding of the financial system, which extends to all forms of pension provision.

#### **2.4 The Pensions Regulator:**

- regulates occupational pension schemes, including their funding, governance and administration;
- regulates, in respect of stakeholder pensions, registration, designation, and compliance with the charge cap, as well as the other duties imposed on employers, trustees and managers in relation to all work-based pensions e.g. timely payment of contributions;
- regulates certain aspects, including administration, of work-based personal pension schemes;
- provides information, education and assistance in relation to work-based pension schemes to:
  - those involved in the administration of work-based pensions;
  - those who advise trustees and managers on the operation of work-based pensions;
  - employers who sponsor work-based schemes and those who advise them

#### **2.5 Work place contract-based schemes**

Both the FSA and the Pensions Regulator have regulatory responsibilities in relation to work place contract-based schemes. These are personal pension or stakeholder policies where contributions are paid into them through direct payment arrangements, ie the mechanism of employer payments, whether these payments are employer contributions or are employee contributions deducted from pay. A provider may operate one or more personal pension schemes and each work place contract-based arrangement will be a subsection of one of these schemes.

The FSA's main areas of focus are advice to employees and the regulation of providers. They do not have a significant role in relation to employers. The Pensions Regulator's main focus is on promoting good administration, and the requirements on employers around the payment of contributions.

Work place contract based schemes fall under the remit of both regulatory bodies. The FSA's remit embraces all personal pensions, both individual and work place contract based schemes, whereas TPR's remit covers occupational schemes and work place contract based schemes.

In the event of significant risks affecting work place contract based schemes, the regulators will liaise regarding any action to be taken.

Where significant risks are identified which relate across a provider's individual personal pension portfolio (i.e. individual personal pensions and work place contract based schemes), the FSA is more likely to lead on this area as it goes wider than TPR's remit. The risk will be assessed by the FSA in line with its risk based approach.

Where there are problems which primarily relate to GPPs then the regulators will liaise TPR is more likely to take the lead, particularly where there are issues which relate to the employer.

If the matter is particularly serious there may be occasions where both regulators will seek to address issues. This would be done following discussions between the regulators as to how this can be done in a complementary manner.

### **3. CO-OPERATION, CO-ORDINATION AND EXCHANGE OF INFORMATION**

- 3.1 The FSA and the Pensions Regulator will seek to co-operate in a timely way in the regulation of occupational and personal, including stakeholder, pension schemes. In particular, the FSA and the Pensions Regulator will seek to ensure that time is allowed for a proper exchange of views. This co-operation will help ensure that:
- (i) those involved in pensions (e.g. FSA-authorized firms, employers, consumers, scheme members, scheme administrators, scheme trustees etc.) are aware which regulator is responsible for different aspects of pensions regulation;
  - (ii) the application to pension schemes of each regulator's governing legislation will, so far as possible, be complementary and transparent; and
  - (iii) the FSA's and the Pensions Regulator's public communications on issues of common interest will be appropriately co-ordinated.
- 3.2 The FSA and the Pensions Regulator will meet as necessary to ensure that these benefits are achieved, including regular meetings at staff level and an annual

meeting at senior management level. Meetings at staff level will take place at least quarterly and more frequently on an ad-hoc basis as necessary, including when it is not possible to reach agreement on a particular issue. These will involve relevant departments (e.g. policy, supervision, enforcement) as appropriate.

### **Public awareness and understanding**

- 3.3 The FSA's public awareness objective extends to the education of consumers (including members of all types of pension scheme, whether occupational schemes or personal pensions) in all financial matters. The Pensions Regulator's objective of promoting and improving the understanding of good administration of work-based pension schemes is focused mainly on employers, trustees, scheme administrators and other people involved in the day-to-day running of work-based pensions. There will also be circumstances where the Pensions Regulator will have an interest in the information and advice given to scheme members about their pension scheme rights and benefits.

The FSA and the Pensions Regulator will liaise closely to ensure that their separate awareness activities are complementary and achieve maximum effectiveness. In their activities they will bear in mind any relevance to or impact on the other organisation's wider strategic objectives. An example of this close liaison is with the separate information leaflets produced by TPR and FSA for members of occupational and personal pensions respectively outlining members' options as they approach retirement. These have been designed to convey the same messages - for example those around the open market option and the range of annuity features. Another example of the regulators' liaising is in relation to the FSA's 'Financial Capability' strategy.

### **Consumer protection**

- 3.4 The FSA and the Pensions Regulator will liaise with each other with the aim of ensuring that FSA activities undertaken for the purpose of its consumer protection objective and Pensions Regulator activities undertaken for the purpose of its objective of protecting the benefits of members of work-based pension schemes are complementary and effective.

### **Supervision and enforcement**

- 3.5 FSA and Pensions Regulator staff involved in supervision and enforcement will seek to maintain general awareness and understanding of each other's functions and needs and will liaise with each other as appropriate and as set out in paragraph 3.2 on issues of common interest and exchange information, including information listed in paragraphs 3.10-3.11.

### **Complaints and redress**

- 3.6 A separate Memorandum of Understanding between the Pensions Ombudsman and the Financial Ombudsman Service governs the handling of complaints relating to occupational and personal, including stakeholder, pensions by these bodies. The FSA and the Pensions Regulator will liaise with each other as necessary on pensions-related complaints arrangements.

### **Compensation arrangements**

- 3.7 The FSA and the Pensions Regulator will liaise with each other as necessary on the compensation arrangements provided by the Financial Services Compensation Scheme, the Pension Protection Fund and the Fraud Compensation Fund. In particular, this will include careful co-ordination and exchange of information, where relevant, in cases where defaults or potential defaults under any of these compensation schemes could have a bearing on the other regulator's responsibilities – see section 3.10.

### **Europe**

- 3.8 The FSA and the Pensions Regulator will liaise with each other and co-ordinate their activities as appropriate on European developments relating to pensions, including the work of CEIOPS (the Committee of European Insurance and Occupational Pension Supervisors), of which both the FSA and the Pensions Regulator are members.

### **Other areas of mutual interest**

- 3.9 The FSA and the Pensions Regulator recognise that there will be other areas of common interest. The FSA and the Pensions Regulator will liaise with each other in connection with such issues. For example, in the event of maladministration of a pension scheme, the FSA and the Pensions Regulator will seek to work closely to establish where the source of the problem lies. Where appropriate, the Pensions Regulator will take responsibility for administration where it relates predominantly to group personal pensions, and the FSA for administration problems which indicate difficulties within an FSA authorised firm more widely.

## **Exchange of information**

3.10 The FSA and the Pensions Regulator will exchange information as appropriate in connection with the carrying out of their respective responsibilities for the regulation of pension schemes. This will include, where relevant:

- information about any action taken against a person by one regulator which may be relevant to the functions of the other. This will include for example notification in advance in appropriate circumstances – for example prohibition orders, the FSA’s withdrawal of an approved person’s approval, the Pensions Regulator’s improvement notices, the Pensions Regulator’s third party notices, etc;
- information held by the Pensions Regulator which give rise to concerns or potential concerns about an FSA-authorized firm’s prudential soundness, fitness or propriety. For example the issuing by the Pensions Regulator of a contribution notice
- any concerns arising from a pre-clearance request by an authorised firm under the so-called ‘moral hazard’ provisions in the Pensions Act 2004;
- any concerns about an authorised firm’s compliance with statutory funding requirements for defined benefit pension schemes;
- information held by the FSA which indicate problems with the solvency of pension providers or of employers which sponsor schemes eligible for the Pension Protection Fund; information about any decision by the Pensions Regulator that has a material impact on a listed company’s finances in relation to its liabilities to its defined benefit pension scheme;
- any proposed FSA / Pensions Regulator public announcement that may be relevant to functions of the other regulator;
- proposed Pensions Regulator codes of practice that may be relevant to the FSA;
- information held by either regulator about fraud / criminal or any other activity that might cast doubt on the fitness and propriety of an FSA-authorized firm, an approved person, or a pension trustee; and
- information held by the Pensions Regulator which indicates that there may be a failure of an FSA-authorized firm’s systems and controls.

3.11 In particular, information will be exchanged on request in connection with:

- applications to the FSA for authorisation and/or permission;
- applications to the Pensions Regulator for registration;
- EEA insurance undertakings that provide, or apply to provide, occupational pension schemes where the UK is host or home state; and
- enforcement action under consideration or taken against pension scheme operators, employers, managers or trustees.

### **Requests and referrals**

3.12 The FSA and the Pensions Regulator may request information from each other or refer a matter for action if the other body is considered more appropriate to deal with the matter having regard to its resources, expertise, powers and objectives. Any such request or referral shall include details of the information or action sought, and the legal powers or legislative gateways it considers are available. It may suggest a reasonable deadline for response, including an explanation of any urgency. The recipient of the request or referral will respond within the deadline or, if it is unable to do so, it will inform the other party as soon as reasonably possible indicating the date by which it expects to give a full response.

### **Freedom of information**

3.13 The FSA and the Pensions Regulator will seek to co-operate with each other when requests are received by one party that includes information received from, or which might affect the interests of, the other party.

## **4. INVESTIGATION AND ENFORCEMENT**

4.1 The FSA and the Pensions Regulator recognise that there are areas in which they have complementary functions and powers. They will therefore endeavour to ensure that the most appropriate body or bodies will commence and lead investigations. To the extent permitted by law:

- (a) neither the Pensions Regulator nor the FSA will begin an investigation or enforcement action without informing the other if it has previously agreed that the other should be the sole investigator or enforcer;
- (b) in cases of parallel investigations, the FSA and the Pensions Regulator will notify each other of significant developments and discuss in advance the steps they propose to take.

## **5. COLLABORATION ON GUIDANCE, POLICY AND STANDARDS**

- 5.1 Representatives from the FSA and the Pensions Regulator will work collaboratively on guidance, high-level policy, industry standards and recommendations to Ministers that may have an impact on the work of the other. This will include, for example, proposed Pensions Regulator codes of practice that may be relevant to the FSA, or FSA consumer alerts concerning pensions matters. The body initiating a project will have regard to the need to allow a reasonable time for the other body to input effectively to it. Both organisations will share communication and publication plans to facilitate joined up messages and effective resource planning.
- 5.2 The FSA are a member of both the TPR Advisory Panel and also the DC working group set up by TPR. The FSA does not have any standing stakeholder groups that look particularly at pension issues. Where there is stakeholder consultation in relation to work place contract based schemes on an ad hoc basis TPR will be involved.
- 5.3 TPR and FSA have committed to build on existing joint working arrangements and will implement, in relation to areas of common interest and where appropriate, more joint project working and combined publications. Areas of common interest include the regulation of work-based personal and stakeholder pensions and the level of financial capability of members of pension schemes. These are likely to form the focus for much of the collaborative activity between TPR and FSA.
- 5.4 TPR and FSA will be members of the Pensions Institutions Forum. The forum is designed to encourage more joined up working on pensions issues between regulators and across government, providing a richer channel for communication, as well as facilitating resolution of issues and agreement on specific joint activity.
- 5.5 In areas of mutual interest TPR and FSA will aim to develop, where appropriate, more jointly managed projects to create a common regulatory response on specific issues. Steps will be taken to increase stakeholder awareness of the roles of the respective regulators so that there is understanding over what each regulator does in areas of common interest, for example, contract-based schemes. In addition, combined communications and enhanced signposting by each regulator to the other's web site will provide the regulated community with greater clarity on the roles of the two bodies and more accessible and joined-up guidance on regulatory requirements. The scope for combined communications will be influenced by a number of factors. For example, the target audience, the relevance of the topic to the objectives of the respective regulators and respective timescales.

## 6. REVIEW OF MEMORANDUM OF UNDERSTANDING

6.1 The FSA and the Pensions Regulator will consider formally at least annually as appropriate:

- any issues that have arisen from the operation of the Memorandum;
- the content and application of this Memorandum and any changes which need to be made;
- the exercise of the FSA's and the Pensions Regulator's respective responsibilities;
- whether any procedures need to be changed;
- whether any FSA rules need to be amended; or
- whether any recommendations need to be made to Government for amendments to legislative requirements.

## 7. PUBLICATION

7.1 Copies of this Memorandum are available on the FSA and Pensions Regulator websites (<http://www.fsa.gov.uk> and <http://www.thepensionsregulator.gov.uk>).

Signed.....

Signed.....

Hector Sants

Tony Hobman

for the Financial Services Authority

for the Pensions Regulator

Date 17<sup>th</sup> October 2007

Date 17<sup>th</sup> October 2007

## **Annex A**

### **LEGISLATIVE FRAMEWORK**

Key pieces of legislation relating to the FSA and the Pensions Regulator are:

1. The FSA
  - Financial Services and Markets Act 2000
  - Handbook of Rules and Guidance
  - Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 (SI 2001 No 544)
  - Financial Services and Markets Act 2000 (Financial Promotion Order) 2001 (SI No 1335)
  - Income and Corporation Taxes Act 1988
  - Finance Acts (annual)
  
2. The Pensions Regulator
  - Pension Schemes Act 1993
  - Pensions Act 1995
  - Pensions Act 2004
  - Occupational Pension Schemes (Preservation of Benefits) Regulation 1991 (SI 1991 No 167)
  - The Occupational and Personal Pension Schemes (Levy) Regulations 1997 (SI 1997 No 666)
  - The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI 1996 No 1655)
  - The Stakeholder Pension Schemes (Amendment) Regulations 2002 (SI 2004/1480)
  - The Stakeholder Pension Schemes (Amendment No 2) Regulations 2002 (SI 2002/2098)
  
3. Applicable to both
  - Welfare Reform and Pensions Act 1999
  - The Stakeholder Pension Schemes Regulations 2000 (SI 2000 No 1403)
  - The Stakeholder Pension Schemes (Amendment) Regulations 2001 (SI 2001 No 104)
  - The Stakeholder Pension Schemes (Amendment) (No 2) Regulations 2001 (SI 2001 No 934)
  - The Stakeholder Pension Schemes (Amendment) Regulations 2005 (SI 2005 No 577)
  - Data Protection Act 1998
  - Freedom of Information Act 2000
  - Public Interest Disclosure Act 1998
  - The Human Rights Act 1998
  - The Regulation of Investigatory Powers Act 2000