

Memorandum of Understanding

between

Financial Markets Authority

and

Banking Ombudsman Scheme Limited

Memorandum of Understanding dated 2 December 2021

Between

Financial Markets Authority (FMA);

And

Banking Ombudsman Scheme Limited (BOS).

1. Roles and responsibilities of FMA and BOS

- 1.1 The FMA is an independent Crown entity established under the Financial Markets Authority Act 2011 (**FMA Act**), with statutory functions under that Act and the Acts listed in Schedule 1 of that Act. The FMA's main objective is to promote and facilitate the development of fair, efficient, and transparent financial markets. It monitors, investigates, and enforces compliance with securities, financial reporting, and company law as they apply to financial markets participants and financial markets. The FMA regulates securities exchanges, financial advisers and brokers, discretionary investment managers, derivatives issuers, statutory supervisors, and managed investment schemes (including KiwiSaver).
- 1.2 BOS is an approved dispute resolution scheme under section 50 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSPR Act**). Its purpose is to investigate and resolve disputes between customers and their banking service providers. Under the FSPR Act the approved dispute resolution schemes are intended to be accessible, independent, fair, accountable, efficient, and effective.
- 1.3 The parties have agreed to enter into this Memorandum to record the basis upon which they will endeavour to assist each other in the performance of their respective functions.

2. Principles

- 2.1 This Memorandum is a statement of the intent of the FMA and BOS to consult, cooperate and exchange information in relation to financial services providers (as defined in the FSPR Act) that are members (as also defined in the FSPR Act) of BOS. The consultation, cooperation and exchange of information will assist both the FMA and BOS to achieve their complementary objectives and facilitate fair, efficient and transparent financial markets and investor confidence in financial service providers.
- 2.2 The FMA and BOS anticipate that cooperation will be primarily achieved through on going information sharing, supplemented when necessary by more in-depth cooperation.
- 2.3 The FMA's ability to share information it holds in relation to the exercise and its powers or the performance of its functions and duties is governed and limited by section 59 of the FMA Act.

That section prohibits the FMA from publishing or disclosing information or documents that are supplied or disclosed to, or obtained by, the FMA under the FMA Act or any financial markets legislation (as defined in the FMA Act) unless the publication or disclosure of the information or document is to certain persons (as set out in section 59(3)). Such persons include a person who the FMA is satisfied has a proper interest in receiving the information or document. The FMA will therefore only disclose or supply other information to BOS under this Memorandum where the disclosure is permitted under section 59(3) of the FMA Act. Furthermore, the FMA may, by written notice, impose any conditions on BOS in relation to the publication, disclosure, or use of information or documents provided to it by the FMA in accordance with section 60 of the FMA Act.

- 2.4 The FMA acknowledges that BOS's ability to share information with the FMA is limited by BOS's Terms of Reference (TOR). The TOR provide that BOS is not able to disclose personal information to the FMA about a complaint BOS has received:
- (a) that may identify the complainant or the financial service provider named in the complaint (refer to paragraph 38 of the TOR); or
 - (b) where the person who provided the information to BOS has asked for that information to be kept confidential to BOS, unless BOS has the consent from the person that provided that information to disclose it to the FMA (refer to paragraph 15 of the TOR).
- 2.5 However, BOS must disclose information to the FMA about a complaint BOS has received if it is required by law to do so (refer to paragraph 39.2 of the TOR).
- 2.6 BOS must disclose information to the FMA if BOS has reasonable grounds to believe that a member which is a financial markets participant (as defined under s4 of the FMA Act) has contravened or is likely to contravene any financial markets legislation in a material respect (refer to paragraph 47 of the TOR and section 67 of FSPR Act).
- 2.7 BOS may also disclose information to the FMA if it needs to consult with the FMA to decide whether BOS or the FMA should consider a complaint BOS has received, provided BOS has the complainant's consent to disclose any information that may identify the complainant (refer to paragraph 39.4 of the TOR).
- 2.8 The FMA acknowledges that BOS's ability to share information with the FMA is also limited by the Privacy Act 2020.
- 2.9 BOS will only disclose or supply information to the FMA under this Memorandum where the disclosure is permitted under the TOR and is not in breach of the Privacy Act 2020.
- 2.10 Subject to relevant legislation and the TOR, the FMA and BOS agree that in their dealings with each other as contemplated under this Memorandum they will:
- (a) act in good faith, and approach issues in a timely, collaborative, open, and transparent manner;
 - (b) cooperate in the performance of their respective functions;

- (c) seek to achieve a complementary and consistent approach, so far as it is appropriate given their independent roles and respective objectives;
- (d) endeavour to keep each other informed, and to exchange information and views, in areas relevant to each other's responsibilities, where appropriate, including through regular meetings;
- (e) identify opportunities to coordinate activities in order to enhance efficiency, promote consistency, and avoid unnecessary duplication in the regulation of financial service providers (as defined in the FSPR Act); and
- (f) maintain an appropriate degree of transparency on principles and practices relating to the performance of their respective functions.

2.11 In accordance with the principles of consultation, cooperation and exchange of information, but without limiting their general application, both parties agree to make relevant information available to the other as set out in clause 3, and subject to any legislative requirements and the TOR.

3. Information Sharing

- 3.1 Subject to clause 2, the FMA and BOS agree to confer and report any trends arising out of their work relating to specific financial services and financial products which are relevant to the purpose of the other.
- 3.2 BOS will provide quarterly reports to the FMA relating to complaints, enquiries, and disputes it receives in relation to financial service providers in a form agreed between the parties. The parties acknowledge that the form of the report may change periodically.
- 3.3 The FMA will provide quarterly reports to BOS relating to complaints it receives in relation to financial service providers. The form of the report shall be as agreed between the FMA and BOS from time to time, but will include information about the number and general characteristics of the complaints.

4. Referrals

- 4.1 In some instances the FMA receives complaints which may be suitable for referral to BOS. To support the efficient and effective resolution of complaints, FMA will develop an internal process to ensure complainants are aware of the services BOS offers for appropriate complaints.

5. Meetings

- 5.1 FMA and BOS will meet at least quarterly at such times and places as the parties agree from time to time. The meetings will facilitate regular contact between the parties on routine operational matters, trends, financial service providers operating on the perimeter of financial markets legislation and risks relating to specific financial services or products.
- 5.2 Senior representatives of the parties will meet at least annually to review and discuss the operation of this Memorandum and cooperation and coordination between the parties.

6. Contact Persons

All communications between FMA and BOS should be between the principal points of contact as communicated by the parties to each other from time to time.

7. Confidentiality

- 7.1 For the purposes of this Memorandum “Confidential Information” includes all information, whether written or oral or by any other means, relating to any engagement between the parties pursuant to this Memorandum and all information provided by a party in accordance with this Memorandum, other than information that:
- (a) is in or comes into the public domain through no fault of the relevant party or any of its officers, employees, agents or contractors;
 - (b) was and can be demonstrated to have been, lawfully in the relevant party's possession or known to the relevant party before its disclosure; or
 - (c) is disclosed to the relevant party by a third party having no obligation of confidence in relation to that information.
- 7.2 Each party agrees:
- (a) to keep confidential all Confidential Information; and
 - (b) to use the Confidential Information solely for the purposes of performing its functions.
- 7.3 The parties will abide by all relevant privacy obligations and legislation and not disclose any personal information which it is not permitted to disclose to the other party, or which the disclosure of, would amount to a breach of any privacy obligations or legislation or governing rules that apply to that party. The FMA must be satisfied that appropriate protections are in place for maintaining the confidentiality of the information or document (in particular, information that is personal information within the meaning of the Privacy Act 2020) prior to its disclosure, in accordance with section 59(4) of the Financial Markets Authority Act 2011.
- 7.4 Nothing in this Memorandum will prevent the disclosure of information that is required or permitted to be disclosed by law. Where either party is required by law to disclose information

obtained under this Memorandum or intends to disclose information obtained under this Memorandum which it is expressly permitted by statute to disclose in the particular circumstances, the disclosing party will notify the other party in writing as soon as practicable.

8. Legal Nature of Memorandum

8.1 This Memorandum is intended to be facilitative only and to assist the FMA and BOS in the performance of their respective functions, and is not intended to create legally enforceable rights or obligations.

8.2 Without limiting clause 3.1:

(a) nothing in this Memorandum limits the exercise by the FMA of any of its powers or the performance by the FMA of any of its functions under the FMA Act or any other legislation, or requires the FMA to act in a particular manner in the exercise of its powers or the performance of its functions;

(b) nothing in this Memorandum limits the exercise by BOS of any of its powers or the performance by BOS of any of its functions under the FSPR Act or other legislation, or requires BOS to act in a particular manner in the exercise of its powers or the performance of its functions;

(c) requires or obliges either party to provide any information to the other except as regulated by law under financial markets legislation or other relevant legislation.

8.3 This Memorandum does not affect any right of the FMA or BOS to communicate with or obtain information or documents from any person (as defined in the FSPR Act).

9. Disputes

Where there is a disagreement over any matter related to issues in this Memorandum, the parties will seek to resolve the issue by negotiation at an operational level. If these negotiations fail, the matters will be referred to the FMA's Chief Executive Officer and the Banking Ombudsman for discussion and resolution.

10. Term and Review

10.1 This Memorandum will continue in full force and effect unless and until terminated in the following manner:

(a) by agreement of both parties; or

(b) by either party on not less than 3 months written notice to the other party.

10.2 Upon termination of this Memorandum, the parties must meet, as soon as practicable, to discuss and agree the process by which any joint initiatives or protocols developed under this Memorandum will be terminated. This includes ensuring, to the maximum extent possible, that their respective interests and objectives and on-going performance of their respective functions are not prejudiced by such termination beyond the extent of any prejudice necessarily caused by virtue of the termination.

11. Execution

Signed for and on behalf of
Financial Markets Authority



Acting Chief Executive

Date: 2 December 2021

Signed for and on behalf of
Banking Ombudsman Scheme Limited



Banking Ombudsman

Date: 2 December 2021