

# The roles and responsibilities of the Financial Services Authority and the Office of Fair Trading

1. This statement describes the respective roles and responsibilities of the Financial Services Authority (FSA) and the Office of Fair Trading (OFT). It is intended to help our various stakeholders understand the differences in our roles and, where our interests coincide, how we manage them.
2. The statement also describes how the FSA and the OFT work with the Financial Ombudsman Service (FOS) in respect of complaints from individual consumers and issues potentially resulting in wider implications for consumers or firms.

## The Financial Services Authority (FSA)

3. The FSA is the UK's primary financial regulator. It aims to promote efficient, orderly and fair financial markets, to help retail consumers achieve a fair deal and to improve its business capability and effectiveness.
4. The Financial Services and Markets Act 2000 (FSMA) gives the FSA four statutory objectives:
  - maintaining market confidence in the UK financial system;
  - promoting public understanding of the financial system;
  - securing the appropriate degree of protection for consumers; and
  - helping reduce financial crime.

The FSA is answerable, through the Treasury, to Parliament for the effective discharge of its functions.

5. Within the scope of FSMA, the FSA is responsible for the authorisation and prudential supervision of financial services firms, including banks, building societies, investment firms, insurance companies and brokers, credit unions and friendly societies. The FSA also applies conduct of business regulation for the mortgage, insurance and investment mediation activities of these firms.
6. For deposit-taking business, conduct of business regulation is applied by the Banking Code (a voluntary industry code that sets standards of good banking practice), not the FSA. The Banking Code, which is monitored and enforced by the Banking Code Standards Board, covers current accounts and overdrafts, savings and deposit accounts, payment services and credit cards.

## The Office of Fair Trading (OFT)

7. The OFT is the UK's independent consumer and competition authority. It has a broad remit covering the whole of the UK economy, including some aspects of financial services. The OFT has many different legal powers that enable it to carry out its mission to make markets work well for consumers. Its regulatory powers are limited to the operation of the consumer credit and merger control regimes, which are statutory functions.
8. The OFT is a non-ministerial government department established by statute and accountable to Parliament.
9. The OFT's aim is for competitive, efficient and innovative markets where standards of consumer care are high, consumers have choice and are confident about making choices, and where businesses comply with consumer and competition laws but are not overburdened by government regulations or restricted and harmed by market abuse.
10. The OFT's work includes analysing and studying markets, enforcing competition and consumer law, approving codes of practice (through its Consumer Codes Approval Scheme) and working with partners to deliver relevant education programmes to businesses and consumers.

## Areas of mutual FSA/OFT interest

11. The FSA and the OFT have different, but complementary, powers and statutory objectives. Their interests coincide in the following areas:

### 11.1. Authorisation/licensing requirements

The OFT is responsible for regulating and licensing consumer credit in the UK, established by the Consumer Credit Act (CCA) 1974, as amended by the CCA 2006. Firms that are required to apply for authorisation to the FSA, because their activities fall under FSMA, may also need to apply to the OFT for a consumer credit licence.

### 11.2. Unfair Contract Terms

Both the FSA and the OFT have powers in relation to unfair contract terms under the Unfair Terms in Consumer Contracts Regulations 1999. The OFT is the lead enforcer under the Regulations. The FSA is one of a number of qualifying bodies which means that it may also exercise powers under the Regulations.

The OFT and the FSA have a Concordat which sets out the division of responsibilities between them for considering fairness within consumer contracts for financial products and services and ensuring that action is taken by the authority best placed to lead on any given issue.

Broadly, the FSA will consider the fairness of standard terms in financial services contracts issued by FSA-authorized firms (or their appointed representatives) for FSA-regulated activities. The OFT will consider the fairness of standard terms in all other financial services contracts. Further detail can be found in the Concordat at [http://www.fsa.gov.uk/pubs/other/concordat\\_fsa\\_ofi.pdf](http://www.fsa.gov.uk/pubs/other/concordat_fsa_ofi.pdf).

### 11.3. Financial advertising

Both the FSA and the OFT, as well as the Advertising Standards Authority (ASA), have powers in relation to financial advertising. The ASA is an independent body that regulates the content of advertisements, sales promotions and direct marketing in the UK. It responds to consumer complaints on many different advertising media (although, notably, not website advertising) for all products. However, it typically passes complaints, or seeks advice, about financial services advertising to the FSA or the OFT depending on the area covered. These areas are primarily deposit-taking, insurance, pure protection policies, regulated mortgage contracts and investment business (FSA) and consumer credit (OFT).

The FSA and the OFT work closely together to address issues arising from compliance with their respective requirements.

### 11.4. Competition

The OFT is responsible for enforcing competition law in the UK under the Competition Act 1998, the Enterprise Act 2002 and certain other sector specific legislation including FSMA. Under FSMA, the FSA must consider competition, but this is not a statutory objective.

Although the FSA is the lead regulator for financial services, it falls to the OFT to ensure that competition law is effectively applied in this sector. Its duties here include market investigation references to the Competition Commission when the criteria is met and keeping the FSA's regulating provisions and practices under review. The latter means that the two organisations work together where the OFT investigates competition issues arising from an FSA-regulated activity.

12. Given our mutual interest in these and other areas, the FSA and the OFT published a Joint Action Plan in April 2006. This set out a programme of joint working that aims to reduce the administrative burden on firms, improve the way in which both organisations make information available to consumers and firms and deliver risk-based regulation.

13. Two updates have been published summarising progress made on the Joint Action Plan: the first in November 2006; the second in July 2007. The Action Plan and updates can be found at [www.ofi.gov.uk/ofi\\_at\\_work/partnership\\_working/financial\\_services/](http://www.ofi.gov.uk/ofi_at_work/partnership_working/financial_services/).

## Dealing with complaints

14. Neither the FSA nor the OFT can compensate individual consumers or assist individuals with their complaints. That is the role of the firm in the first instance.
15. The FOS is the UK's statutory dispute resolution scheme, established under FSMA, providing an independent service for resolving individual consumers complaints about firms' provision of (or failure to provide) a financial service.
16. The FOS is not a regulator and FSMA makes it clear that the FOS is operationally independent of the FSA.
17. More detail on the role and jurisdiction of the FOS is set out in Annex 1.

## Bilateral agreements between the FSA, the OFT and the FOS

18. Given the connections between the areas these three organisations cover, there are a number of agreements between the organisations that set out how they manage their working relationship. These agreements are set out at Annex 2.

## Annex 1

### The Financial Ombudsman Service (FOS)

1. The FOS is a statutory, informal dispute resolution service, established under FSMA but independent from the FSA. It operates as an alternative to the civil courts.
2. Its role is to resolve disputes between individuals or small businesses and financial firms quickly and with minimum formality on the basis of what is fair and reasonable in the circumstances of each case.
3. In considering what is fair and reasonable, the FOS will take into account the relevant law, regulations, regulators' rules and guidance and standards, relevant codes of practice (such as the Banking Code), and good industry practice at the relevant time.
4. The FOS has three jurisdictions, covering nearly all financial services business:
  - **Compulsory jurisdiction**

This applies to financial services firms authorised by the FSA, and covers consumer complaints about FSA-regulated activities, consumer credit activities and certain other specified activities.
  - **Consumer credit jurisdiction**

The Consumer Credit Act 2006 created the consumer credit jurisdiction. This covers consumer credit complaints against any businesses with standard licences from the OFT not authorised by the FSA. If the licensee is also authorised by the FSA, its consumer credit complaints are covered by the compulsory jurisdiction.
  - **Voluntary jurisdiction**

This applies voluntarily to financial businesses and activities that are not covered by the compulsory jurisdiction or the consumer credit jurisdiction. It covers consumer complaints about certain of these businesses' financial activities, for example National Savings & Investments.
5. The FOS covers businesses regulated by two different regulators – the FSA and the OFT – as well as covering some businesses (in the voluntary jurisdiction) that are not covered by any regulator.
6. The FSA has statutory oversight of FOS and appoints its Chairman and directors, but the FOS is operationally independent. This has allowed it to take on wider jurisdictions that cover businesses which are not FSA-regulated.
7. FOS decisions, if accepted by the complainant, are binding on respondent businesses and it can make awards of up to £100,000. The service is free to consumers.

## Annex 2

### Bilateral agreements between the FSA, the OFT and the FOS

#### 1. Memorandum of Understanding between the FSA and the FOS

- 1.1. The FOS gives the FSA regular updates on the main issues it confronts and both organisations have dedicated teams to work with one another.
- 1.2. The FSA and the FOS also have a Memorandum of Understanding that sets out how the two organisations co-operate and communicate to carry out effectively their independent roles and separate functions.
- 1.3. This Memorandum can be found at [www.financialombudsman.org.uk/about/other\\_bodies.html](http://www.financialombudsman.org.uk/about/other_bodies.html)

#### 2. Memorandum of Understanding between the OFT and the FOS

- 2.1. The OFT and the FOS have a Memorandum of Understanding that sets out how the two organisations share information and how they work together including on the consumer credit jurisdiction (CCJ), in particular the collection, by the OFT, of the industry levy to support the CCJ.
- 2.2. This Memorandum can be found at [www.financial-ombudsman.org.uk/about/other\\_bodies.html](http://www.financial-ombudsman.org.uk/about/other_bodies.html)

#### 3. Wider implications process

- 3.1. The FSA and the FOS have had a published process in place to deal with complaints to the FOS that might have wider regulatory implications for firms and consumers since March 2005. The OFT joined this process in June 2007.
- 3.2. Such cases can be those where there is a widespread issue or issues which could give rise to significant consumer detriment. The arrangements clarify the different roles and responsibilities of the FSA, the OFT and the FOS when wider implications issues arise.
- 3.3. Full details of this process can be found at [www.wider-implications.info](http://www.wider-implications.info)