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**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE FINANCIAL CONDUCT AUTHORITY (FCA)  
AND  
THE COUNCIL FOR LICENSED CONVEYANCERS  
concerning:**

1. exempt professional firms; and
2. authorised professional firms.

PART 1: GENERAL

1. APPLICATION AND PURPOSE
2. DEFINITIONS

PART 2: EXEMPT PROFESSIONAL FIRMS

3. PROVISION OF INFORMATION ABOUT EXEMPT PROFESSIONAL FIRMS
4. PROVISION OF INFORMATION ABOUT THE COUNCIL FOR LICENSED CONVEYANCERS, ITS RULES, SYSTEMS AND PROCEDURES
5. COMPLAINTS ABOUT EXEMPT REGULATED ACTIVITIES AND ARRANGEMENTS FOR REDRESS
6. THE COUNCIL FOR LICENSED CONVEYANCERS' REGULATORY FUNCTIONS

PART 3: AUTHORISED PROFESSIONAL FIRMS

7. AUTHORISED PROFESSIONAL FIRMS

PART 4: MISCELLANEOUS

8. REVIEW OF THIS MEMORANDUM OF UNDERSTANDING
9. DATE OF COMING INTO FORCE OF THIS MEMORANDUM OF UNDERSTANDING
10. PUBLICATION
11. THE SHARED INTELLIGENCE SYSTEM

SCHEDULE – CONTACT DETAILS

## **PART 1: GENERAL**

### **SECTION 1 – APPLICATION AND PURPOSE**

#### **1.1 General Principles**

- 1.1.1 The purpose of this memorandum of understanding (**‘MoU’**) is to provide a framework for the ongoing working relationship between the Financial Conduct Authority (**‘the FCA’**) and the Council for Licensed Conveyancers (**‘CLC’**) to enable both parties to discharge their respective functions under the Act (defined below) concerning members (defined below) carrying on exempt regulated activities and authorised professional firms.
- 1.1.2 This MoU is intended to promote the development of an open and consultative relationship between the FCA and the CLC and supplements provisions of the Act (defined below) and the FCA’s Handbook of Rules and Guidance.
- 1.1.3 Neither the FCA nor the CLC will incur any legal liability arising solely from non-compliance with this MoU, and nothing in this MoU shall be construed as requiring the FCA or the CLC to take any action which would otherwise be prohibited by law. The FCA recognises the right of a complainant to make a complaint about the service provided by a CLC regulated practice to the Legal Ombudsman.
- 1.1.4 The FCA and the CLC agree that information provided to the FCA by the CLC and vice versa under the information sharing provisions of this MoU and which constitutes confidential information about the affairs of the CLC may be shared by the FCA with the Legal Ombudsman or Ministry of Justice.

### **SECTION 2 - DEFINITIONS**

#### **2.1 Definitions and Interpretation**

In this MoU the following terms and rules of interpretation are used:

**“the Act”** means the Financial Services and Markets Act 2000;

**“authorised person”** means a person who is authorised for the purposes of the Act;

**“authorised professional firm”** means a professional firm which is an authorised person;

**“client”** means:

- a) a person who uses, or has used, any of the services provided by a member of the CLC in the course of carrying on exempt regulated activities (including, where the member of the CLC is acting in his capacity as a trustee, a person who is, has been or may be a beneficiary of the trust); or
- b) a person who has rights or interest which are derived from, or otherwise attributable to, the use of any such services by other persons; or
- c) a person who has rights or interests which may be adversely affected by the use of any such services by persons acting on his behalf or in a fiduciary capacity in relation to him;

**“complaint”** includes any expression of dissatisfaction;

**“consumer”** means a person who uses, has used, is or may be contemplating using any of the services provided by an authorised professional firm in carrying on regulated activities; who have rights or interests which are derived from, or are otherwise attributable to, the use of any such services by other persons; or who have rights or interests which may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them;

**“CLC”** means the Council for Licensed Conveyancers

“**disciplinary proceedings**” shall, where appropriate given the context, be construed as including disciplinary proceedings under the CLC’s disciplinary arrangements.

“**exempt professional firm**” means a person to whom, under section 327 of the Act, the general prohibition does not apply and is licensed by the CLC;

“**exempt regulated activity**” means a regulated activity which may, as a result of Part XX of the Act, be carried on by a member of the CLC without breaching the general prohibition;

“**Gateways Regulations**” mean The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (as amended);

“**immediately**” is to be interpreted as meaning as soon as is reasonably practicable and without undue delay;

“**IPRU (INV)**” means the Interim Prudential Sourcebook for Investment Business in the FCA’s Handbook of Rules and Guidance;

“**member**” in relation to the CLC means a person who is entitled to carry on the practice of that profession and, in practising it, is subject to rules of the CLC;

“**non-mainstream regulated activity**” means a regulated activity (as defined in the FCA’s Handbook of Rules and Guidance) in relation to which the conditions of PROF 5.2.1R are satisfied;

“**Part XX**” means Part XX of the Act;

“**PII**” means professional indemnity or professional liability insurance;

“**PROF**” means the Professional Firms Sourcebook in the FCA’s Handbook of Rules and Guidance;

“**professional firm**” means a person which is:

- a) an individual who is entitled to practise the profession regulated by the CLC and in practising it is subject to its rules; or
- b) a person (not being an individual) which is managed or controlled by one or more individuals each of whom:
  - (i) is entitled to practise the profession regulated by the CLC; and
  - (ii) in practising it is subject to the rules of the CLC

“**proceedings**” (where the context so admits) means any process or hearing in a court of civil or criminal jurisdiction;

“**rule**” means any rule, direction or guidance made or issued by the CLC and which is intended to apply to all or some of its members and includes but is not restricted to rules made under section 332 of the Act and rules of general professional conduct;

“**SIS**” means the Shared Intelligence System which is an “anything known” enquiry service on individuals and firms that all participating bodies use to locate information held by other regulators;

## **PART 2: EXEMPT PROFESSIONAL FIRMS**

### **SECTION 3: PROVISION OF INFORMATION ABOUT EXEMPT PROFESSIONAL FIRMS**

#### **3.1 Overriding Objective**

- 3.1.1 The CLC and the FCA respectively recognise that the overriding objective under Part XX is the provision of an appropriate level of protection for the interests of clients.
- 3.1.2 The FCA's duties and functions under the Act are non-delegable and include but are not limited to the following:
- (i) to comply with its duty under section 325 of the Act and Ch. 3.1 of PROF to keep itself informed about the way in which the CLC supervise and regulate the carrying on of exempt regulated activities by its members;
  - (ii) to keep under review the desirability of the exercising any of its powers under section 328 of the Act (Directions) or section 329 of the Act (Orders);
  - (iii) the duty to act in a manner which is compatible with the regulatory objectives set out in the Act; and
  - (iv) monitoring and enforcement under para 6 of Schedule 1 to the Act.
- 3.1.3 The duties and functions of the CLC under the Act include but are not limited to:
- (i) the powers, duties or functions in relation to members which are or may be exercised for the purposes of supervising and regulating exempt regulated activities (**'the CLC's regulatory functions'**); and
  - (ii) its duty to co-operate by the sharing of information and other ways with the FCA, to enable the FCA to fulfil its duties and to keep under review the desirability of exercising its powers under Part XX.
- 3.1.4 The FCA and the CLC will hold liaison meetings at least once a year (unless otherwise agreed) to discuss how they are jointly and separately achieving the objective of providing an appropriate level of protection for the interests of clients.

#### **3.2 Gateways Regulations**

- 3.2.1 The FCA and CLC acknowledge that any exchange of confidential information about exempt professional firms or members performing functions in exempt professional firms is subject to the confidentiality requirements of the Act and the Gateways Regulations.

#### **3.3 Matters likely to be of material concern to the FCA**

- 3.3.1 The CLC will inform the FCA immediately if it becomes aware that any matter likely to be of material concern to the FCA that may have arisen in relation to any one or more of the following (and which comes within the CLC' remit relevant to this MoU):
- (i) exempt regulated activities; and/or
  - (ii) exempt professional firms.
- 3.3.2 Matters likely to be of material concern to the FCA include but are not limited to:
- (i) Information giving the CLC reason to believe that an exempt professional firm may no longer be a fit and proper person to carry on regulated activities in accordance with section 327(1) of the Act;
  - (ii) Information giving the CLC reasonable cause to believe that the interests of clients are or may be at risk;
  - (iii) Information giving the CLC reasonable cause to believe that a member carrying on functions in relation to an exempt professional firm may not be a fit and proper person to carry out the functions concerned;

- (iv) Information giving the CLC reasonable cause to believe that a person may have committed a criminal offence that the FCA has power to investigate under the Act; and
- (v) Information on the prohibition by the CLC of a firm from carrying on insurance mediation activities, in order that the FCA can remove the firm from the FCA Register.

### **3.4 Annual Return of Information about Firms**

- 3.4.1 Within 4 months of the end of December each year the CLC will supply the FCA with a list of its exempt professional firms to include:
- (i) the number of exempt professional firms; and
  - (ii) the number of members carrying on exempt regulated activities in the relevant exempt professional firms.

### **3.5 Information about exempt regulated activities**

- 3.5.1 Within 4 months of the end of December each year the CLC should provide the FCA with a report about the range and scope of exempt regulated activities carried on by its exempt professional firms, including information about the exempt regulated activities carried on in different areas of actuarial practice.

### **3.6 Periodic statements and committee minutes covering exempt professional firms**

- 3.6.1 Upon reasonable request the CLC will provide the FCA with a copy of any periodic or occasional statements required under the CLC's rules or a committee minute relating to a member's conduct of exempt regulated activities.

### **3.7 Information on investigations and disciplinary proceedings**

- 3.7.1 The FCA will notify the CLC immediately when the FCA commences an investigation into the activities of an exempt professional firm or a member performing functions in relation to exempt regulated activities.
- 3.7.2 The CLC will immediately inform the FCA if it commences an investigation or makes a referral for disciplinary proceedings in relation to apparent breaches of rules made under section 332 of the Act.

## **SECTION 4: PROVISION OF INFORMATION ABOUT COUNCIL FOR LICENSED CONVEYANCERS, ITS RULES, SYSTEMS AND PROCEDURES**

### **4.1 Information about the CLC's regulatory functions**

- 4.1.1 Within 4 months of the end of December each year, the CLC should provide the FCA with a report about how the CLC has exercised its regulatory functions over the past year and how it intends to exercise its regulatory functions for the forthcoming year commencing 1 January.

### **4.2 Notice of intended changes to DPB Rules**

- 4.2.1 The CLC acknowledge that any changes to its Rules made under section 332(3) require the approval of the FCA.
- 4.2.2 CLC should provide the FCA with reasonable notice of any proposed rule changes relating to any of the following matters in so far as they affect its members' conduct of exempt regulated activities:
- (i) arrangements and procedures for handling complaints from clients about members;
  - (ii) mandatory PII requirements; and
  - (iii) training, competence and qualification requirements.

### **4.3 Notice of FCA policy initiatives affecting CLC members carrying on the conduct of exempt regulated activities**

- 4.3.1 The FCA agrees that the CLC should receive an early indication of any policy initiatives or proposed consultations which are likely to have an effect on the exempt regulated activities carried on by CLC licensed entities.

#### **4.4 Annual Report of Council for Licensed Conveyancers**

- 4.4.1 The CLC should provide the FCA with a copy of its annual report as soon as it is available.

### **SECTION 5: COMPLAINTS ABOUT EXEMPT REGULATED ACTIVITIES AND INFORMATION ABOUT ARRANGEMENTS FOR REDRESS**

#### **5.1 Complaints handling arrangements concerning exempt regulated activities**

- 5.1.1 The CLC will maintain appropriate and effective arrangements for handling complaints from clients about exempt regulated activities.
- 5.1.2 The CLC will notify the FCA if it makes a change to its procedures for handling complaints about its exempt professional firms' conduct of exempt regulated activities.

#### **5.2 Generic information and statistics on the CLC's complaints handling arrangements and PII arrangements.**

- 5.2.1 Within 4 months of the end of December each year, the CLC will provide the FCA with information about the operation of the CLC' arrangements for handling complaints from clients relating to exempt regulated activities to include:
- (i) the number of complaints received;
  - (ii) the number of clients affected;
  - (iii) the outcome of complaints; and
  - (iv) details of any information which may become available about professional indemnity claims arising from members' conduct of exempt regulated activities.

### **SECTION 6: THE COUNCIL FOR LICENSED CONVEYANCERS' REGULATORY FUNCTIONS**

#### **6.1 The CLC's regulatory functions**

- 6.1.1 The CLC will co-operate with the FCA, to the extent that it may reasonably be required, in respect of any review the FCA may undertake of the CLC's regulatory functions that come within the FCA's remit.

## **PART 3: AUTHORISED PROFESSIONAL FIRMS**

### **SECTION 7 : AUTHORISED PROFESSIONAL FIRMS**

- 7.1 The FCA and the CLC acknowledge that confidential information about some activities of authorised professional firms or approved persons may only be disclosed between themselves where the CLC or the FCA considers that such disclosure is in the public interest or is otherwise permitted under the Gateways Regulations.
- 7.2 The CLC acknowledges that under Rule 2.3 of IPRU(INV), an authorised professional firm must maintain adequate PII cover and that compliance with the CLC's Rules on PII cover from time to time in force is deemed compliant with Rule 2.3. The CLC will inform the FCA as soon as reasonably practicable if it makes any changes to the PII arrangements which apply to authorised professional firms.
- 7.3 The CLC will immediately provide the FCA with relevant information about authorised professional firms that is likely to be of material concern to the FCA. This information includes but is not limited to:
- (i) circumstances suggesting to the CLC that an approved person or an authorised professional firm is not a fit and proper person;
  - (ii) information that the CLC receives which indicates that consumers may be at risk;
  - (iii) the commencement of an investigation by the CLC into any activities of an authorised professional firm where those activities may also affect the firm's conduct of regulated activities;
  - (iv) details of any referral of an authorised professional firm for disciplinary proceedings;
  - (v) any adverse findings, fines or other penalty imposed as a result of disciplinary proceedings;
  - (vi) circumstances which give rise to a reasonable suspicion that money laundering or financial crime has taken place in connection with the carrying on of regulated activities by an authorised professional firm.
  - (vii) information on the prohibition by the CLC of an authorised professional firm from carrying on non-mainstream regulated activity.
- 7.4 The FCA will give the CLC an early indication of any policy changes that are likely to have an effect on authorised professional firms.
- 7.5 The FCA will immediately give the CLC any information about any authorised professional firm that is likely to be of material concern to the CLC.
- This information includes but is not limited to:
- (i) the commencement of any investigation;
  - (ii) the results of any disciplinary or enforcement action; and
  - (iii) any concerns regarding the fitness and propriety of an approved person or an authorised professional firm.



**PART 4: MISCELLANEOUS**

**SECTION 8: REVIEW OF THIS MoU**

8.1 The FCA and the CLC will review this MoU regularly and consult each other with a view to improving its effectiveness and to resolve any difficulties.

**SECTION 9: DATE OF COMING INTO FORCE OF THIS MoU**

9.1 This MoU will come into effect when it is signed by both parties.

9.2 This MoU supersedes any previous memorandum of understanding between the FCA (or any of its predecessor bodies) and the CLC.

**SECTION 10: PUBLICATION**

10.1 The FCA and the CLC agree to publish this MoU on their respective websites.

**SECTION 11: THE SHARED INTELLIGENCE SERVICE**

11.1 The CLC confirms that it will provide information to the FCA on the outcome of any disciplinary proceedings that will enable the FCA to include the relevant names on SIS.

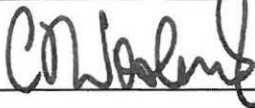
**SCHEDULE**

Contact at the FCA: Michael Ross, Financial Conduct Authority, 1st Floor, Quayside House, 127 Fountainbridge, Edinburgh, EH3 9QG. Tel: 0131 301 2023. Email: [michael.ross@fca.gov.uk](mailto:michael.ross@fca.gov.uk)

Contact at the CLC: Simon Blandy, CLC, 16 Glebe Road, Chelmsford, Essex, CM1 1QG. Tel: 0124 534 1323. Email: [simonb@clc-uk.org](mailto:simonb@clc-uk.org)

*Signed on behalf of the Financial Conduct Authority*

on 9<sup>th</sup> of April 2013

  
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**Christopher Woolard**  
Director, Policy, Risk and Research Division

*Signed on behalf of the Council for Licensed Conveyancers*

on 4 of April 2013

  
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**Sheila Kumar**  
Chief Executive