

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE PENSIONS AUTHORITY
AND THE OFFICE OF THE FINANCIAL SERVICES AND PENSIONS
OMBUDSMAN**

This Memorandum is made on the 6 November 2019.

Between

The Pensions Authority, Verschoyle House, 28/30 Lower Mount Street, Dublin 2.

And

The Office of the Financial Services and Pensions Ombudsman, Lincoln House, Lincoln Place, Dublin 2.

1. Definitions

“Authorised Representatives” means such officers working or who have worked for either Party, as well as persons acting or who have acted on behalf of either Party as are identified by the signatories of this agreement or their respective successors as being authorised to represent that Party for the purposes of Article 11 of this Memorandum of Understanding;

“Complaint” means a complaint made in accordance with the 2017 Act in relation to the conduct of a pension provider;

“Complainant” means a person who makes a complaint that is either a consumer, an actual or potential beneficiary, a person acting on behalf of an actual or potential beneficiary or a person of a specified class as determined by the Minister;

“FSPO” means the Office of the Financial Services and Pensions Ombudsman;

“Liaison Officer” means the liaison officers designated by the signatories of this Memorandum or their respective successors or by their Authorised Representatives to carry out the functions as outlined in paragraph 4.1;

“Memorandum” means all provisions of this Memorandum of Understanding, as from time to time may be amended by agreement between the Parties in accordance with Article 8 of this Memorandum;

“Party” means the Pensions Authority and/or the Office of the Financial Services and Pensions Ombudsman and together they shall be referred to and construed as the “Parties”;

“Pension Provider” has the meaning given to it by section 2 of the 2017 Act;

“Personal Data” means any information relating to an identified or identifiable natural person (‘data subject’);

“PRSA” means Personal Retirement Savings Account;

“Requesting Party” means the Party submitting a request for information and/or assistance under this Memorandum;

“Respondent Party” means the Party to whom a request for information and/or assistance has been submitted under this Memorandum;

“the Act” means the Pensions Act 1990;

“the Authority” means the Pensions Authority;

“the GDPR” means the General Data Protection Regulation;

“the 2017 Act” means the Financial Services and Pensions Ombudsman Act 2017; and

“the 2018 Act” means the Data Protection Act 2018.

A reference to any statute or statutory provision shall include any statute or statutory provision which amends, extends, consolidates or replaces the same

and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute.

2. Background

2.1 The FSPO, established under the 2017 Act, and the Pensions Authority, established by the Act, wish to establish a framework for co-operation and information sharing about those elements of the provision of pension products and services which fall within their respective remits and to establish effective procedures for signposting members of the public to each other's services.

2.2 The FSPO is responsible for investigating complaints about the conduct of Pension Providers and regulated Financial Services Providers.

2.3 The Pensions Authority is responsible for (i) monitoring and supervising the operation of the Act and pension developments generally, including the activities of Personal Retirement Savings Account ('PRSA') providers, the provision of PRSA products and the operation of PRSAs, (ii) issuing guidelines or guidance notes on the duties and responsibilities of trustees of schemes and trust RACs and codes of practice on specific aspects of their responsibilities (iii) issuing guidelines or guidance notes on the duties and responsibilities of PRSA providers in relation to PRSA products and with regards to such products (iv) issuing guidelines or guidance notes generally on the operation of the Act and specified associated legislation, (v) encouraging the provision of appropriate training facilities for trustees of schemes and trust RACs, (vi) advising the Minister on all matters arising in relation to the Act and, in particular, on standards for trustees of schemes and trust RACs and on their implementation, and (vii) such other tasks as specified under section 10 of the Act or as the Minister may request from time to time.

2.4 While operating separate and distinct mandates, the Parties act in the public interest to ensure that: –

- (a) members of the public are treated fairly and properly in the pensions market;

- (b) the potential for risk or harm to members of the public availing of pension products is minimised, thereby increasing confidence in the pension sector;
- (c) pension providers operate and are held to the highest possible standard, and
- (d) where appropriate, and permissible by law, information is shared between the Parties to enable them to effectively perform their respective functions, in a manner that contributes to promoting the best interests of members of the public, actual or potential beneficiaries of occupational pension schemes and PRSAs.

3. Purpose of this Memorandum

3.1 Consistent with the overall objectives set out in paragraph 2.1, the purpose of the Memorandum is to:

- (a) promote co-operation between the Parties in areas of strategic and high level operational interest;
- (b) facilitate co-operation on the cross-referral of complaints and/or queries where one of the Parties believes that the complaint and/or query falls within the remit of the other;
- (c) facilitate within the constraints laid down by the relevant legislation, the exchange of information and the provision of assistance in the following circumstances:
 - i. where specified information and/or assistance is requested by one Party from the other;
 - ii. where one Party has information and/or could provide assistance that is likely to be of significance to the other Party's statutory obligations, powers and functions.

4. Liaison between the Offices

4.1 In recognition of the importance of close co-operation and collaboration, the Parties commit to nominating two Liaison Officers, at an appropriate grade in their respective Offices, to operate and monitor the co-operative arrangements

entered into under this Memorandum.

5. Promotion and Facilitation of General Co-operation

5.1 The Parties will seek to maintain strong and constructive relationships with each other in order to contribute to promoting the best interests of members of the public, actual or potential beneficiaries of occupational pension schemes and PRSAs.

5.2 To that end, the content of each Party's website dealing with the respective roles and how each Office may be of service to prospective complainants and/or members of the public will contain appropriate links and signposting to the other Party's website for members of the public.

5.3 The wording to be used when signposting individuals who contact either Party's Office and who may more appropriately, at a later stage, have their complaints and/or queries dealt with by the other Party's Office, will be agreed.

5.4 Joint training initiatives for staff with regards to the functions of the other respective Party's functions may be considered and joint initiatives may be considered (such as projects, research and presentations), where appropriate.

5.5 A Party may request a meeting with the other Party to discuss one or more information requests and/or requests for assistance or any other relevant issue, and the other Party shall endeavour to attend such a meeting as requested.

5.6 Notwithstanding the above, neither Party will seek to advise a prospective complainant or member of the public as to how the other Party may discharge its functions under the 2017 Act or the Act.

6. Co-operation between the Parties where a complaint involves an allegation of financial loss and a breach of the Act

6.1 A complaint by an individual to either the Authority or the FSPO may involve an alleged breach of the Act, in addition to containing an element of financial loss suffered as a result of alleged maladministration.

6.2 Complaint and/or query received by the Authority

6.2.1 The Authority has two options where an aspect of a complaint relates to alleged financial loss and that is:

- (a) to advise the complainant to contact the FSPO; or
- (b) to refer the complaint to the FSPO, with the agreement of the Complainant.

6.2.2 That part of the complaint and/or query, if any, relating to the failure to comply with provisions of the Act or otherwise falling within the remit of the Authority, shall continue to be examined by the Authority.

6.3 Complaint received by the FSPO

6.3.1 Where a complaint of the type referred to in 6.1 is received by the FSPO, the FSPO will, if appropriate, advise the individual making the complaint to contact the Authority regarding that aspect of the complaint which involves a potential breach of the Act or otherwise falls within the remit of the Authority.

6.3.2 The FSPO may decide to refer a complaint directly to the Authority where the FSPO is of the opinion that there may have been a breach of the Act by a trustee responsible for the management of an occupational pension scheme or a PRSA provider or other relevant person (including, but not limited to a custodian or investment manager) in relation to a PRSA.

7. Exchange of Information and Provision of Assistance

7.1 The Authority and the FSPO hereby agree to the exchange of information and the provision of assistance to the extent that the disclosure and provision of such information and/or assistance is permitted or required by law.

7.2 Any information disclosed by the FSPO to the Authority must be in accordance with the provisions of section 18 of the 2017 Act. Section 18 of the 2017 Act does provide for the mutual sharing of information and at the time of this Memorandum of Understanding, there are no legislative provisions that

allow the Authority to disclose information to the FSPO. This Memorandum of Understanding will be amended, as appropriate, once such legislative provisions are commenced which allow for the disclosure of information by the Authority to the FSPO.

7.3 The Respondent Party will not disclose any information that would be in breach of the relevant legislative provisions governing disclosure.

7.4 Where the request for information and/or assistance, requires the processing of personal data both parties shall endeavour to ensure compliance with the General Data Protection Regulation and the Data Protection Act 2018.

7.5 In particular, the Parties shall ensure that any such personal data shall be:

- (a) processed lawfully, fairly and in a transparent manner;
- (b) collected only for the specified, explicit and legitimate purposes of the request and not further processed in any manner that might be incompatible with those purposes;
- (c) adequate, relevant and limited to what is requested;
- (d) accurate and, where necessary, kept up to date;
- (e) kept in an appropriate form, such that the data subject can be identified only as long as is necessary for processing (and shall, where appropriate, be anonymised before being shared); and
- (f) processed in a secure manner.

7.6 In ensuring that the data has been processed lawfully, the Parties shall ensure that at least one of the following applies:

- (a) that the processing is necessary for the performance of a contract (the contractual basis);
- (b) that the processing is necessary for compliance with a legal obligation (legal obligation basis);
- (c) that the processing is necessary to protect the vital interests of the data subject or of another person (vital interest basis);
- (d) that the processing is necessary for the performance of a task in the public interest (the public interest basis);

- (e) that the processing is necessary for the legitimate interests pursued by the Party (legitimate interest basis); and
- (f) that the data subject has given consent to the processing of their data for one or more specified purposes (the consent basis).

8. Requests for Information and Assistance

8.1 Where it becomes apparent to either the Authority or the FSPO, in carrying out their respective duties, that either Party possesses information which is likely to be significant to the other Party's statutory functions or obligations, the Party possessing the information will transfer the information to the other Party upon a request in writing if permitted to do so by relevant legislative provisions, as outlined in 8.2. Each Party will seek to provide the other Party with any relevant follow on information on request, as is appropriate in the circumstances.

8.2 Each Party agrees that it will, upon written request to the Liaison Officer of the other Party, provide to the Requesting Party any information in its possession, or assistance, of a kind specified in the request where it:

- (a) agrees that the request appears reasonable; and
- (b) it is permitted or required to do so by law.

8.3 The request shall:

- (a) set out the nature of the information and/or assistance requested;
- (b) state that the information and/or assistance is required by the Requesting Party for the purpose of the performance of its functions; and
- (c) state the particular functions for which this information and/or assistance is requested.

8.4 With the exception of urgent requests made under clause 8.7, the Requesting Party shall endeavour to make the request for information and/or assistance in writing or via e-mail to the designated Liaison Officer of the Respondent Party.

8.5 The Parties agree, as far as permitted by law, to provide each other with

every reasonable assistance upon receipt of a request for information and/or assistance.

8.6 In general, the Respondent Party will make all reasonable efforts to comply with the request for information and/or assistance within a timely manner. Where compliance with this timeframe is not possible, the Respondent Party will notify the Requesting Party of this fact as soon as possible and will seek to provide the requested information by an agreed date.

8.7 In cases of urgency, requests for information and/or assistance may at first instance be made orally, and their responses given orally, provided that both requests and responses are subsequently confirmed in writing to the relevant designated Liaison Officer and marked as urgent. Upon receipt of an urgent request the Respondent Party will endeavour to provide the required information and/or assistance as soon as practicable.

8.8. Each Party shall endeavour to provide the requested information and/or assistance in a format and medium appropriate to the requirements of the Requesting Party.

8.9 Where a request for information and/or assistance is declined, the Respondent Party shall take all reasonable steps to provide reasons for the request being declined, unless the Respondent Party is prohibited by law from doing so.

8.10 Each Party agrees to bear its own costs, fees and expenses incurred on foot of a request for information and/or assistance under this Memorandum, subject to the Parties agreeing to alternative arrangements.

9. Use and Disclosures of Information

9.1 Except as may be required by law, a Party will not disclose any information which it has received from the other Party to a third party without the latter Party's prior written approval and such approval shall not be unreasonably withheld.

9.2 Except as may be required by law, the Parties hereby commit themselves

to use the information solely for the purposes described in the request.

9.3 Except as may be required by law, should the Requesting Party wish to use the shared information for any purpose other than the purpose(s) expressed in the request, it must obtain the prior written approval of the Respondent Party.

9.4 The Parties are subject to section 41(1) of the Freedom of Information Act 2014 which provides that the Parties shall refuse to grant an FOI request if, inter alia, the disclosure of the record concerned is prohibited by the law of the European Union or any enactment. Where a Party receives an FOI request relating to information provided by either Party, such a request shall be considered in accordance with the provisions of section 41(1) and the provisions of the Freedom of Information Act 2014 generally.

10. Status of the Memorandum

10.1 Notwithstanding any other provision of this Memorandum, this Memorandum is not intended to create legally binding relations between the parties but rather to outline the intentions of the Parties (which shall not be legally binding) regarding co-operation between them.

10.2 This Memorandum shall not operate to make a Party liable to any person in damages or otherwise for anything done or omitted for which it would not otherwise be so liable.

11. Variation of the Memorandum

The Parties may review this Memorandum at the request of either Party. This Memorandum may be varied at any time with the consent of both Parties. Any variation agreed shall be in writing, shall be signed by the signatories of this agreement or their respective successors or by their Authorised Representatives and shall be introduced on a date agreed by the Parties.

12. Commencement and Termination of the Memorandum

This Memorandum commences on the date of this Memorandum and will continue in effect until the expiration of 30 days after either Party gives notice

to the other Party of its intention to terminate the Memorandum. If either Party gives such notice, this Memorandum will continue to have effect with regard to all requests for information and/or assistance that either Party had made before the effective date of notification until the requesting Party terminates the matter for which it requested such information and/or assistance. The provisions of this Memorandum concerning confidentiality will continue thereafter with respect to information in the possession of the Requesting Party.

Signed by:



Brendan Kennedy

The Pensions Regulator

The Pensions Authority

Date:



Ger Deering

Financial Services and Pensions Ombudsman

Office of the Financial Services and Pensions Ombudsman

Date: