

MEMORANDUM OF UNDERSTANDING

between the:

- (1) **Data Protection Authority**, the independent statutory authority established under *The Data Protection (Bailiwick of Guernsey) Law, 2017*; and
- (2) **Office of the Financial Services Ombudsman**, the independent statutory body established under *The Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014*, trading as the Channel Islands Financial Ombudsman.

1. Definitions

In this memorandum:

- 1.1 'applicable law' means any law (statutory, common or customary) applicable to the Bailiwick of Guernsey and to a matter covered by this MoU;
- 1.2 'the Authority' means the Data Protection Authority;
- 1.3 'Controller' means the same as defined in Section 111 of The Data Protection (Bailiwick of Guernsey) Law, 2017 (the DPGL);
- 1.4 'Data subject' means the same as defined in Section 111 of The Data Protection (Bailiwick of Guernsey) Law, 2017 (the DPGL);
- 1.5 'DPGL' means The Data Protection (Bailiwick of Guernsey) Law, 2017
- 1.6 'MoU' means this Memorandum of Understanding;
- 1.7 'OFSO' means the Office of the Financial Services Ombudsman for Guernsey;
- 1.8 'Ombudsman Law' means The Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014;
- 1.9 'Processor' means the same as defined in Section 111 of The Data Protection (Bailiwick of Guernsey) Law, 2017 (the DPGL);
- 1.10 'Receiving party' means either party receiving information from the other under this MoU;
- 1.11 'Sending party' means either party when sending information to the other under this MoU.

2. Functions

- 2.1 The Authority's main function is to protect the rights of individuals in relation to their personal data and provide for the free movement of personal data through regulation and oversight of The Data Protection (Bailiwick of Guernsey) Law, 2017. This includes the investigation of complaints about the activities of controllers and processors, investigating data breaches and providing guidance and education on all aspects of the DPGL.
- 2.2 OFSO's main function is to resolve complaints about financial services independently, in a fair and reasonable manner, effectively, quickly, with minimum formality, and so as to offer a more accessible alternative to court proceedings.
- 2.3 OFSO is a controller under the DPGL. Nothing in this MoU applies in any circumstance where the Authority needs to make enquiries, conduct an investigation or take other action which directly relates to the processing of personal data by OFSO.

3. This MoU

- 3.1 Under Part V 21(3b)(ii) of the Ombudsman Law, OFSO may disclose confidential information to the Authority for the purpose of enabling or assisting the Authority to exercise, in the Bailiwick and in relation to financial service providers, any function conferred on them by or under any enactment.
- 3.2 Under Part V 21(3)(c) of the Ombudsman Law, OFSO may disclose confidential information to the Authority with a view to the investigation of a suspected offence, or with a view to the institution of, or for the purposes of, any criminal proceedings (whether the offence or proceedings are under this Law or otherwise).
- 3.3 Section 90 of the DPGL sets out the duty of confidentiality that applies to the Authority. It applies where a designated official from the Authority acquires any information from which a person (whether or not an individual) is identified or identifiable –
- 3.3.1 in the exercise or performance of any function under the DPGL, or otherwise under or for the purposes of the DPGL;
 - 3.3.2 directly or indirectly from any person who acquired the information in the exercise or performance of any function conferred or imposed on that person under the DPGL, or otherwise for the purposes of the DPGL; or,
 - 3.3.3 except as authorised, the designated official must not, without the consent of the identifiable person, use the information or disclose the information.
- 3.4 A disclosure of information to which the Authority owes a duty of confidentiality is made with lawful authority if –

- 3.4.1 the disclosure is made with the consent of the data subject;
 - 3.4.2 at the time of use or disclosure, the information is or has already been made public (other than through act or omission of the official);
 - 3.4.3 the information used or disclosed is in the form of a summary or collection so framed as not to enable information relating to any identifiable person to be ascertained from it;
 - 3.4.4 the use or disclosure is necessary for the purposes of exercising or performing any function under the DPGL, enabling or assisting any person to exercise or perform functions conferred or imposed by the DPGL, enabling or assisting a competent supervisory authority to exercise or perform functions conferred or imposed by or under a comparable foreign enactment, or seeking advice from a qualified person on any matter referenced in this sub-paragraph;
 - 3.4.5 the use or disclosure is necessary for the purposes of any legal proceedings, including any proceedings arising from the DPGL or comparable foreign enactment;
 - 3.4.6 the use or disclosure is necessary to enable or assist the pursuit of a law enforcement purpose;
 - 3.4.7 the use or disclosure is necessary for the purposes of enabling the instigation, defence, or conduct of disciplinary proceedings against any person in relation to a breach of a provision of the DPGL or compliance with the DPGL resulting in a breach of the person's professional or other duties;
 - 3.4.8 the use or disclosure is necessary for the purposes of complying with an order of a court or tribunal; or,
 - 3.4.9 the use or disclosure is necessary for the purposes of discharging any international obligations of the Bailiwick.
- 3.5 Each party must take such steps as it considers appropriate to:
- 3.5.1 co-operate with the other in the exercise of their functions;
 - 3.5.2 prepare and maintain a memorandum describing how they intend to cooperate;
- 3.6 The Authority and OFSO are independent of each other and have distinct statutory functions, but cooperation and lawful exchange of information will benefit both consumers and providers of financial services by contributing to the effective functioning of the statutory systems for regulation and dispute-resolution.
- 3.7 This MoU:

- 3.7.1 does not create any enforceable rights;
- 3.7.2 does not modify or supersede any applicable law;
- 3.7.3 applies only so far as it is consistent with the independent roles and statutory obligations of the parties;
- 3.7.4 takes effect immediately;
- 3.7.5 may be terminated by 30 days' written notice from one party to the other; and,
- 3.7.6 the Authority and OFSO will publish this MoU on their websites, and both will ensure that an electronic copy is freely available to the public.

4. General cooperation

- 4.1 The Authority and OFSO will seek to maintain a strong and constructive relationship. In particular they will:
 - 4.1.1 seek to dispel confusions and misunderstandings about their different roles;
 - 4.1.2 seek to achieve a complementary and consistent approach to the extent that it does not constrain the independent carrying out of their respective statutory functions;
 - 4.1.3 seek to assist one another with in-house training on their respective roles;
 - 4.1.4 communicate regularly and meet at least quarterly to discuss matters of mutual interest;
 - 4.1.5 attend such meetings at appropriate levels of seniority, and equivalent levels of seniority (for example, chief executive to chief executive);
 - 4.1.6 share, for comment, at an early stage any draft consultation or other public document that might have significant implications for the other party;
 - 4.1.7 provide each other with a list of contacts to whom information exchanged under this MoU should be directed; and,
 - 4.1.8 keep under review the operation of this MoU and consult one another as appropriate on improving its operation and resolving any matters that may arise.
- 4.2 In cases where a persistent, systematic and/or serious pattern of complaints indicates that action by the Authority and/or OFSO may be required to protect consumers of financial services and the action that could be taken by the Authority or OFSO may have an impact on

action that could be taken by the other, the Authority and OFSO will liaise with each other to discuss the appropriate way forward.

5. Information sharing

- 5.1 The Authority and OFSO may only provide information to the other if permitted, or not prevented, under applicable law. Subject to this, they will seek to share information that will enable or assist them to exercise their respective functions. This may include information relating to specific complaints, complaint trends, application and interpretation of the applicable laws and joint initiatives. All requests for information will reference the statutory basis for the request and disclosure.
- 5.2 The information sharing will not include any disclosure that would be prohibited by the applicable laws, unless specifically permissible by those laws.
- 5.3 The Authority and OFSO will provide each other, at least 2 working days before publication, with a copy of any public report or public statement that would enable or assist the other in fulfilling its statutory functions, including public notice of any OFSO final determination against a registered Controller or Processor on an issue that may fall within the Authority's responsibility.
- 5.4 The Authority and OFSO will commit to providing relevant members of their respective staff with sufficient training to recognise this MoU exists and to be able to operate in accordance with it.

6. Confidentiality

- 6.1 All non-public information shared under this MoU will be marked as such by the sending party.
- 6.2 In respect of any non-public information shared under this MoU, the receiving party will:
 - 6.2.1 comply with any restrictions set by the sending party on use of the information that are agreed when the information is provided;
 - 6.2.2 seek the sending party's consent in good time before disclosing the information to any third party where such consent is required;
 - 6.2.3 not disclose the information to any third party without the prior consent of the sending party in writing (which includes email) where such consent is required;
 - 6.2.4 notify the sending party if it anticipates a legally-enforceable demand for disclosure of the information where such notification is appropriate;

- 6.2.5 notify the sending party if any legally-enforceable demand for disclosure of the information is received, unless this is not practicable because of urgency;
 - 6.2.6 if requested by the sending party in relation to a legally-enforceable demand for disclosure of the information, assert any legal exemptions or privileges against disclosure on behalf of the sending party; and,
 - 6.2.7 if it is not practicable to notify the sending party of the receipt of a legally-enforceable demand for disclosure of the information, assume the sending party will wish to assert any legal exemptions or privileges against disclosure.
- 6.3 Unless indicated otherwise in a particular instance, information provided to or shared between the Authority by OFSO pursuant to this MoU shall be treated as strictly confidential and may only be processed for the purposes detailed herein. For the purposes of the Access to Public Information each request for information will be assessed on a case-by-case basis and after discussion between both parties.
- 6.4 Paragraph 5 of this MoU will continue to apply to non-public information shared between the Authority and OFSO in the event that this MoU is terminated.

Dated: 23 September 2021

Signed for The Data Protection Authority

Emma Martins, Data Protection Commissioner

Signed for OFSO

Douglas Melville, Principal Ombudsman & Chief Executive