



# Memorandum of Understanding

between  
**the Commerce Commission**  
and  
**Financial Services Complaints Limited**





## This memorandum of understanding

**Between** the Commerce Commission (**the Commission**)  
**And** the Financial Services Complaints Limited (**FSCL**)  
together, the “Parties”

### Background

1. The Commission is an independent Crown entity established under section 8 of the Commerce Act 1986 with statutory functions under that and other statutes including the Fair Trading Act 1986, the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**), the Telecommunications Act 2001, the Fuel Industry Act 2020, and the Dairy Industry Restructuring Act 2001.
2. FSCL is an independent dispute resolution scheme established in 2010 as a company constituted under the Companies Act 1993 and approved by the Minister of Consumer Affairs under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**). Its role is to resolve complaints between consumers and their financial service provider about financial services and advice, including insurance, loans, managed funds and trustee services.
3. Both Parties collect a wide range of information in order to give effect to their responsibilities. The Parties may work together where they are considering matters where they have a mutual interest, which are specifically:
  - 3.1 the conduct of the consumer credit market in New Zealand, where it is regulated by the Commission under the Credit Contracts and Consumer Finance Act 2003 and matters related to the consumer credit market; and
  - 3.2 other matters that the Parties may agree, from time to time, where they are properly within the regulatory mandate of the Commission and FSCL’s Terms of Reference (**TOR**).
4. The Parties wish to record the operational protocols regarding cooperation between the Parties and the provision of information.
5. The Parties understand that how they collect and use information is fundamental to fostering trust and confidence in their services. The Commission’s policy on the collection, use and provision of information is in accordance with the “Information Gathering and Public Trust” Model Standards issued by the Public Service Commission on 18 December 2018 (as may be updated from time to time). FSCL’s policy on the collection, use and sharing of information is set out in its TOR.

### Purpose

6. The purpose of this Memorandum of Understanding (**MOU**) is to provide a framework for a formal relationship of cooperation and the provision of information between the Parties to enable effective and efficient performance of each Party’s functions.

## Cooperation principles

7. Where, and to the extent appropriate, practicable and permitted by law, the Parties will:
  - 7.1 Communicate in an open, honest and timely manner.
  - 7.2 Raise relevant issues promptly with each other.
  - 7.3 Ensure that the other Party is informed of any seminars, workshops, or conferences that a Party is hosting that it considers the other Party may be interested in and extend invitations to attend or participate.
8. Where, and to the extent appropriate, practicable and permitted by law, the Parties may provide assistance or information to the other Party about matters of mutual interest.
9. Each Party will raise any operational or policy concerns through the other Party's Relationship Manager (see clause 21 below), rather than through the media.

## Provision of information

10. The Parties will comply with their obligations under the Privacy Act 2020, and other relevant legislation and published guidelines, including the TOR, when requesting, receiving and using information. The Commission will also comply with its obligations under the Official Information Act 1982.
11. Obligations regarding the use, storage and retention of any information provided to the Commission are set out in Schedule 1 to this MOU.

### *Provision of information to the Commission*

12. FSCL is required under sections 67 and 67A of the FSP Act to advise the Commission when it has reasonable grounds to believe that a member that is a creditor under a consumer credit contract or a mobile trader has contravened or is likely to contravene the CCCFA in a material respect.
13. FSCL also agrees that:
  - 13.1 It will report to the Commission on any trends arising out of its work relating to members of its scheme who provide credit under a consumer credit contract.
  - 13.2 Where FSCL becomes aware, it will give the Commission information about any material complaints about any FSCL member that is a creditor under a consumer credit contract or a mobile trader under the CCCFA (and any associated Regulations) and the Responsible Lending Code. A complaint is "material" when it has one or more of the following characteristics:
    - a) it indicates an actual or potential systemic issue that could detrimentally affect other customers or clients of FSCL's member;
    - b) it indicates a high level of actual or potential consumer harm has occurred or is likely to occur;

- c) there has been a series of similar complaints, either about one member, or about a particular group of members providing a similar consumer credit or mobile trader service, that indicates a wider problem within the industry.

- 14. In any of the instances set out in clauses 12 or 13 above, FSCL will provide to the Commission the information required in a timely manner and in a manner to be agreed in writing by the Parties separately from this MOU.

*Requests for information made to the Commission*

- 15. Any requests for information from FSCL to the Commission should be made in writing to the Commission's Relationship Manager. Oral requests must be followed up by a written request as soon as practicable, or as agreed at the time of the request.
- 16. Requests for information to the Commission will be treated as requests for information under the Official Information Act and/or the Privacy Act.
- 17. The Commission will respond to requests for information as soon as is practicable or within the timeframe requested and in accordance with the Official Information Act and/or the Privacy Act.
- 18. Where the Commission holds the information requested but declines to provide it to FSCL, it will (to the extent it is able to do so) inform the other Party of the reason for declining the request and comply with the relevant provisions in the Official Information Act and/or the Privacy Act.
- 19. Before requesting information, FSCL should consider whether the information is already in the public domain and can be obtained without the need for a formal request.

**Representatives and reviews**

- 20. Each Party will appoint a "**Senior Representative**" and a "**Relationship Manager**" to assist with the implementation of this MOU and continued relationship between the Parties. The initial Senior Representative and Relationship Manager for each party are:

<p><b>Commerce Commission</b></p> <p><b>Senior Representative</b></p> <p>Louise Unger General Manager, Credit Branch 55 Shortland Street Auckland 1010</p> <p><b>Relationship Manager</b></p> <p>Karla Reynolds Engagement and Operations Manager, Credit Branch Level 13, 55 Shortland Street Auckland 1010</p> <p>Email: <a href="mailto:karla.reynolds@comcom.govt.nz">karla.reynolds@comcom.govt.nz</a></p>	<p><b>Financial Services Complaints Limited</b></p> <p><b>Senior Representative</b></p> <p>Susan Taylor CEO Legal House, 101 Lambton Quay Wellington 6011</p> <p><b>Relationship Manager</b></p> <p>Stephanie Newton Case Management team leader Legal House, 101 Lambton Quay Wellington 6011</p> <p>Email: <a href="mailto:stephanienevton@fscf.org.nz">stephanienevton@fscf.org.nz</a></p>
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21. Relationship Managers will:
- 21.1 be the first point of contact between the Parties with respect to the day to day implementation of this MOU;
  - 21.2 meet every three months, virtually or in person, unless otherwise agreed, to discuss the activities undertaken pursuant to this MOU, activity that could constitute current or future matters of mutual interest, and any other matters relevant to the relationship between the Parties;
  - 21.3 develop or amend protocols relating to specific procedures and activities, as required; and
  - 21.4 notify each other of any changes to their representatives under this MOU.
22. The Parties' Senior Representatives will meet every three years, virtually or in person, or as otherwise agreed by the Parties, to review this MOU and the Schedule.
23. Either Party may terminate the MOU by giving three months' notice in writing to the other Party.
24. Any modification of this MOU, including modification or termination of any Schedule, shall first be discussed by the Senior Representatives, and then agreed in writing between the Parties.

**Issue or dispute resolution**

25. All issues, disputes and differences between the Parties about the interpretation or performance of this MOU will be resolved at the earliest opportunity between the Relationship Managers themselves, wherever possible.



26. Only when matters remain unresolved or require further adjudication should they be referred to the Parties' Senior Representatives.

**Costs**

27. Unless the Parties mutually determine otherwise, the cost of meeting the commitments of this MOU shall be met by the Party incurring the cost.

**Legal**

28. Nothing in this MOU shall make either Party liable for the actions of the other or constitute any legal relationship between the Parties.
29. The provisions in this MOU are to be read subject to any Chief Executive, Public Service Commission or Cabinet directives, and any enactment, regulations, rules or applicable case-law. For the avoidance of doubt, nothing in this MOU should be interpreted or applied inconsistently with either Party's statutory functions, powers or obligations.
30. Where there are changes to Government policy or legislation, the TOR, or any other changes which affect the purpose and functions of this MOU, the Parties agree to meet to re-negotiate, if necessary, any aspects of the MOU.

**Signed by the Commerce Commission**



Adrienne Meikle  
Chief Executive  
Commerce Commission

Date: 8/2/22

**Signed by Financial Services Complaints Limited**



Susan Taylor  
Chief Executive Officer

Date: 1/3/22

### **Schedule 1: Use, storage and retention of information**

1. This Schedule does not supersede and should be read together with the more general obligations regarding the provision of information that are set out in the main body of the MOU.
2. Any information provided to the Commission in accordance with this MOU will:
  - 2.1 be used and kept for legitimate purposes only and in line with the Privacy Act, all other relevant legislation, and the Commission's policies, processes and systems,
  - 2.2 be stored with appropriate security measures, whether the information is in electronic form, hard copy or otherwise.