

MEMORANDUM OF UNDERSTANDING

BETWEEN

FINANCIAL MARKETS AUTHORITY

AND

NEW ZEALAND LAW SOCIETY



MEMORANDUM OF UNDERSTANDING dated 15 February 2017

between

FINANCIAL MARKETS AUTHORITY (the FMA)

and

NEW ZEALAND LAW SOCIETY (NZLS)

BACKGROUND

1. The FMA is an independent Crown entity established under the Financial Markets Authority Act 2011 (**FMA Act**). Its statutory functions are outlined in section 9 of the FMA Act and the Acts listed in Schedule 1 of that Act. The FMA's main objective is to promote and facilitate the development of fair, efficient and transparent financial markets. It monitors, investigates and enforces compliance with securities, financial reporting and company law as they apply to financial markets and financial markets participants. The FMA regulates securities exchanges, financial advisers and brokers, financial service providers, trustees and statutory supervisors, KiwiSaver schemes and other superannuation schemes.
2. The FMA also regulates the conduct of contributory mortgage brokers (which previously excluded lawyers and incorporated law firms when they relied on the Securities Act (Contributory Mortgage—Solicitors and Incorporated Law Firms) Exemption Notice 2013 (**Notice**), which Notice expired on 30 September 2016). The Notice, subject to conditions, exempted lawyers and incorporated law firms from the provisions of the Securities Act (Contributory Mortgage) Regulations 1988 in respect of anything done or omitted to be done in their capacity as a lawyer or in relation to their provision of legal services respectively.
3. NZLS is a body corporate continued by the Lawyers and Conveyancers Act 2006 (**LCA**). Its statutory functions are outlined in sections 65 and 66 of the LCA. NZLS's regulatory functions include controlling and regulating the practice of law in New Zealand by lawyers. It regulates practising lawyers' fundamental obligations, including the obligations to uphold the rule of law and facilitate the administration of justice. It also promotes law reform.
4. Amongst other things, the NZLS also regulated lawyers and incorporated law firms that carry out any contributory mortgage lending services when they acted as a lawyer or provider of legal services. NZLS also regulates the conduct of lawyers and incorporated law firms with respect to their regulated trust accounts (as defined in the LCA) when they provide single-lender mortgage lending services.
5. The FMA has assumed primary regulatory responsibility for contributory mortgage lending services carried out by lawyers and incorporated law firms from 1 October 2016 (following revocation of the Notice or earlier if a lawyer or incorporated law firm elected) when lawyers and incorporated law firms carry out contributory mortgage lending services (**lending services**).
6. From 1 October 2016 NZLS no longer has primary regulatory responsibility over lawyers and incorporated law firms carrying out lending services. However, NZLS continues to have primary regulatory responsibility for lawyers' and incorporated law firms' use of regulated

trust accounts (as defined in the LCA) when holding client money in the provision of single lender mortgage broker services.

PURPOSE OF THIS MEMORANDUM OF UNDERSTANDING

7. Both the FMA and NZLS have an interest to ensure that lawyers and incorporated law firms who carry out lending services do so according to relevant legislation, and in a manner consistent with their professional responsibilities.
8. This memorandum of understanding (**MOU**) sets out the framework for engagement and co-operation between the FMA and NZLS, taking into account their applicable regulatory responsibilities.

RELATIONSHIP PRINCIPLES

9. The FMA and NZLS will cooperate and act in good faith, including by:
 - a. communicating and addressing issues in a timely, collaborative and transparent manner;
 - b. exchanging information to help the FMA and NZLS more effectively exercise their respective regulatory functions in relation to lawyers and incorporated law firms carrying out lending services;
 - c. notifying the other party, at the earliest time practicable, of any actions or proposed actions which the other party might reasonably expect to be advised; and
 - d. meeting with each other twice a year to review the operation of this MOU.

INFORMATION SHARING

10. For the purposes of this MOU '**Relevant Information**' means:
 - a. any complaint received by the FMA (either directly or via a financial service dispute resolution scheme or other means) about the conduct of any lawyer or incorporated law firm in their provision of lending services (**Lending Services Complaint**); or
 - b. any information acquired by the NZLS (either directly or via a financial service dispute resolution scheme or other means) about any lawyer or incorporated law firm carrying out lending services in the course of its general regulatory oversight of lawyers and incorporated law firms (**Lawyer Information**),

that is relevant to the other party's regulatory activities in relation to the applicable lawyer or incorporated law firm and which the FMA or the NZLS (as applicable) is permitted by law to disclose to the other party.

11. Both the FMA and the NZLS agree to make the Relevant Information available to each other (both as a matter of course and on request) in a timely and efficient manner and otherwise in accordance with paragraph 14.
12. The NZLS acknowledges that the FMA's ability to share information with the NZLS is limited by section 59(3) of the FMA Act which prohibits the FMA from publishing or disclosing

information or documents that are supplied or disclosed to, or obtained by, the FMA under the FMA Act or any financial markets legislation (as defined in the FMA Act) unless the publication or disclosure of the information or document is to certain persons (as set out in section 59(3) of the FMA Act). Such persons include a person who the FMA is satisfied has a proper interest in receiving the information or document. The FMA will therefore only disclose or supply information to the NZLS under this MOU where the disclosure is permitted under section 59 of the FMA Act. Furthermore, the FMA may, by written notice, impose any conditions on the NZLS in relation to the publication, disclosure, or use of information or documents provided to it by the FMA in accordance with section 60 of the FMA Act.

13. The FMA acknowledges that NZLS' ability to share information with the FMA is limited by certain provisions of the LCA, including sections 188 and 206. The NZLS will therefore disclose or supply information to the FMA under this MOU only where the disclosure is permitted under the LCA and by law. Furthermore, the NZLS may, by written notice, impose any conditions on the FMA in relation to the publication, disclosure, or use of information or documents provided to it by the NZLS.
14. Without limiting paragraph 11 above:
 - a. the FMA will provide NZLS with a six-monthly report in March and September each year (commencing March 2017) summarising any Lending Services Complaint the FMA has received within the reporting period. The initial form of the report is set out in Appendix A. The parties acknowledge that the form of the report may change from time to time; and
 - b. NZLS will provide the FMA with a six-monthly report in March and September each year (commencing March 2017) summarising any Lawyer Information within the reporting period.

CONFIDENTIALITY

15. All Relevant Information shared between the FMA and NZLS, whether written or oral or by any other means, pursuant to this MOU is to be treated as confidential information (**Confidential Information**). Both parties agree to:
 - a. not disclose any Confidential Information to any third party unless permitted or required by law; and
 - b. use the Confidential Information solely for the purposes of performing their respective regulatory functions in the oversight of lawyers and incorporated law firms carrying out lending services.
16. Both parties agree to comply with all relevant privacy and confidentiality obligations, including but not limited to the Privacy Act 1993 and the LCA.
17. Paragraphs 15 and 16 shall remain in effect notwithstanding termination of this MOU.

MOU NOT BINDING

18. This MOU is not intended to create legally enforceable rights or obligations.

19. Nothing in this MOU is intended to limit or affect the independence of either party.

DISPUTES

20. If there is any disagreement over any matter related to the content of this MOU, the parties will seek to resolve the issue by negotiation at an operational level. If these negotiations do not resolve the issue, the matter will be referred to the FMA's General Counsel and the NZLS' Executive Director, respectively, for discussion and resolution.

MOU TERM AND REVIEW

21. This MOU will come into effect upon the execution by a duly authorised signatory of each party.

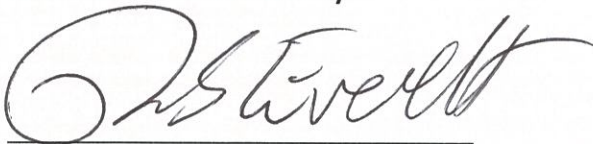
22. This MOU will continue to be in force, and effective, unless and until terminated:

- a. by agreement of the parties; or
- b. by either party, on not less than one month's written notice to the other party.

23. This MOU may be amended only by written agreement of both parties.

EXECUTION

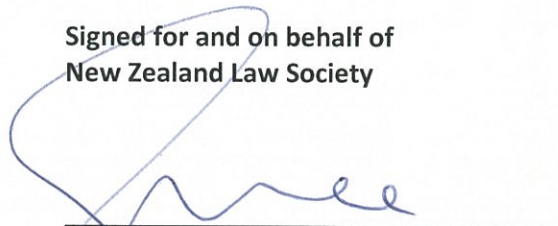
Signed for and on behalf of the
Financial Markets Authority



Rob Everett
Chief Executive
Financial Markets Authority

Date: 24-1-17

Signed for and on behalf of
New Zealand Law Society



Christine Grice
Executive Director
New Zealand Law Society

Date: 15/2/17.

Appendix A

Bi-Annual Report

Report Period [•] – [•]

Number of Complaints

[•]

Total increase/decrease from last quarter

[Graph]

Trend in complaints for last 4 quarters

[Graph]

Distribution of Complaints

Lawyers

Number of complaints

% of total complaints

-
-

Incorporated Law Firms

Number of complaints

% of total complaints

-
-
-
-

Subject Matter

Number of complaints

% of total complaints

-
-