



Memorandum of Understanding

between

**New Zealand Council of
Victim Support Groups**

and

Financial Markets Authority

August 2013

This Memorandum of Understanding is made on the 9th August 2013

Between The New Zealand Council of Victim Support Groups

and The Financial Markets Authority

Introduction

1. The New Zealand Council of Victim Support Groups (“Victim Support”) was established as an Incorporated Society in 1990 and has its registered office at Police National Headquarters, 180 Molesworth Street, Wellington.
2. The Financial Markets Authority (“FMA”) was established under the Financial Markets Authority Act 2011 and has its office at Level 5, Ernst & Young Building, 2 Takutai Square, Britomart, Auckland.
3. FMA and Victim Support wish to formalise their relationship and specify the terms and conditions under which this will occur.

Interpretation

4. For this Memorandum of Understanding (“MoU”):

Areas of common interest mean those matters where each party contributes to a shared outcome or has a shared role or interest.

Act means the Victims’ Rights Act 2002.

Charter means the Victims’ Charter for people affected by crime.

Crime includes, but not exclusively limited to the meaning of an “offence against any enactment” as defined in the Victims’ Rights Act 2002, a “crime involving dishonesty” as defined in the Crimes Act 1961, (which includes “lost property” as defined in the Charter), and offences specified in the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

Parties mean Victim Support and FMA collectively.

Background

5. Victim Support operates offices throughout New Zealand. Each office consists of a team of paid staff and volunteers. Offices are managed through regional managers and a National Office based at Police National Headquarters in Wellington.
6. The vision statement of Victim Support is:

Victims of crime and trauma are in control of restoring their lives.

7. Victim Support fulfils its mission by the provision of:
 - (a) a 24 hour personalised support service and psychological first aid for victims at the time of crisis;
 - (b) referrals to other support services;
 - (c) ongoing emotional and practical support;
 - (d) support for victims and their families and prosecution witnesses at the time of contact with the court and justice system;
 - (e) financial assistance on behalf of the Crown for victims of serious crime towards the costs of dealing with the incident and attending court and other criminal justice processes;
 - (f) help preventing repeat victimisation, especially with victims at high risk of being victims of crime in the future;
 - (g) support services at times of major incidents and civil defence emergencies;
 - (h) advocacy support on the rights and needs of victims;
 - (i) Victim Support accepts the definition of victim as defined under section 4 of the Act and includes in its aims a commitment to also working with victims or co-victims of other trauma such as suicide, crashes and emergencies.
8. The FMA's main objective is to promote and facilitate the development of fair, efficient, and transparent financial markets.
9. FMA has contact with victims who have suffered financial harm whether by crime or civil wrong, and wishes to ensure that it provides appropriate support, noting that while the Act requires an offence, or alleged offence against any enactment to have occurred, it does not require that a charge be laid to recognise there is a victim.
10. FMA cannot take action for every offence or wrong, but it undertakes to identify where harm has arisen and evaluate victims for referral.

Purpose

11. The purpose of this MoU is to establish and promote a collaborative working relationship between Victim Support and FMA by developing a MoU that covers:
 - (a) joint commitment to enhancing the safety, support and restoration of victims and to comply with the provisions of the Act; and
 - (b) Ensuring and enhancing mutual co-operation and assistance in respect of support and services to victims so far as each party is reasonably able to do so.

Outcome

12. The desired outcomes of this MoU is for FMA and Victim Support to work together for the promotion and effective delivery of Victim Support services relating to victims of crime throughout New Zealand and in accordance with the Act.

Effect of this MoU

13. This MoU confirms the relationship between the Parties based on a spirit of goodwill and co-operation. The Parties will work together to achieve the agreed outcome outlined in paragraph 12.

Relationship of the Parties

Role of FMA

14. FMA undertakes to notify Victim Support as reasonably possible and in all cases within 10 working days of identification of harm.
15. The criteria for determining whether to notify Victim Support is set out in Schedule Two to this MoU. This is intended to be a guide and non-prescriptive.
16. Where FMA determines not to notify Victim Support, FMA agrees to continually review the situation, and re-evaluate as new information comes to light (for example, during an investigation).
17. FMA decision process for notifying Victim Support is set out in Schedule Three to this MoU. This is intended to be a guide and non-prescriptive.
18. FMA will provide the notification to Victim Support and be the contact point for on-going liaison regarding victim support related to an investigation or prosecution.
19. FMA will ensure that:
 - (a) employees are sufficiently trained to understand the FMA's obligations under the Act;
 - (b) employees will provide timely and appropriate information to victims about the services provided by Victim Support;
 - (c) Employees will provide information & training to Victim Support that will enable it to contact victims' of financial crime and to keep victims informed of case progress and any prosecution, along with the appropriate support.
20. Information available to be provided by FMA to Victim Support will be considered on a case by case basis.

Role of Victim Support

21. Victim Support agrees that following FMA referral to:
 - (a) contact and offer support to victims' of financial crime;

- (b) ensure that a Victim Support volunteer will be available to contact victims within 5 days of a notification from FMA;
- (c) train Victim Support volunteers dealing with FMA recommendations to standards acceptable to Victim Support;
- (d) Assist FMA achieving "victim centric" objectives and communicating with victims in accordance with the Charter.

Joint Responsibility

22. Both parties:

- (a) are committed to the principles of the Act;
- (b) are committed to the principles and spirit of the Charter;
- (c) have a joint responsibility in respect of Clause 12 above;
- (d) agree to co-operate, subject to the terms of this MoU, in:
 - establishing the responsibilities of the Parties in respect of the services to victims;
 - ensuring the on-going promotion, development and maintenance of the services to victims; and
 - Ensuring that the principles and requirements contained in the Act are followed and maintained.
- (e) The Parties shall meet as required to develop operational strategies to achieve the initiatives and priorities already agreed and to review the operation of this MoU.

Training

23. The Parties are encouraged to develop, maintain and advise each other of mutually beneficial training and hold joint training sessions as determined by operational requirements, which may include other stakeholders such as Police and SFO.

Sharing Information

- 24. When sharing information, the Parties will balance the need to achieve the desired outcomes as set out in paragraph 12 with the need to:
 - uphold the rights of individuals and their rights to privacy;
 - maintain law and order and other statutory obligations; and
 - Comply with the confidentiality requirements of FMA.
- 25. The Parties agree that only sufficient information to achieve the respective agency's purpose will be requested or disclosed by one party to the other.

26. The Parties will comply with the Privacy Act 1993 in any requests for information between each other.

Confidentiality

27. FMA accept the requirements for Victim Support volunteers to retain a confidential relationship with their clients, except where safety of life is threatened.

Liaison

28. The Parties agree that:

- the following positions in the respective organizations will be nominated as Liaison Officers for the purposes of liaison, exchange of information and other operational matters:
 - FMA: Head of Stakeholder Management
 - Victim Support: General Manager Operations
- the Parties Liaison Officers' contact details are set out in Schedule One to this MoU;
- they will maintain a regular forum for liaison on areas of common interest and this will be the responsibility of the respective Liaison Officers; and
- All enquiries regarding the provision of case specific Victim Support services will be co-ordinated through the respective FMA Case Manager.

Review of MoU

29. The Chief Executive of FMA and the Chief Executive of Victim Support (or their delegated officers) will meet annually to review this MoU, discuss initiatives and set priorities for the following year.

Issue or Dispute Resolution

30. All issues, disputes and differences between the Parties regarding the interpretation or performance of this MoU shall, firstly, be resolved at the earliest opportunity by the Liaison Officers.
31. Only when matters remain unresolved or require further adjudication should they be referred to the Chief Executive Victim Support and the Chief Executive of FMA for final resolution.

Costs

32. Unless the Parties mutually determine otherwise, the cost of meeting the commitments of this MoU shall be met by the party incurring the cost.

Termination

33. This MoU will continue in effect until either party gives the other 180 days' notice in writing of intent to disengage from its conditions.

Variation

34. Except as stated in this MoU, it can only be modified by a written agreement signed by the Chief Executive of the FMA and the Chief Executive of Victim Support.

Conditions

35. Nothing in this MoU shall make either party liable for the actions of the other or constitute any legal relationship between the Parties.

Assignment

36. No party may assign any of its agreements under this MoU.

Signed by the Chief Executive, New Zealand Council of Victim Support Groups

Signature



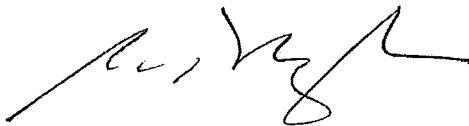
Date: 21 / 18 / 13

Name

Tony Paine

Signed by the Chief Executive, Financial Markets Authority

Signature



Date: 21 / 18 / 13

Name

Sean Hughes

APPENDIX 1

List of Current Schedules

Schedule 1 Parties Representatives

Schedule 2 Criteria for Victim Support Referral

**Schedule 3 FMA & Victim Support MoU
Decision Process**

Schedule 1 – Parties' Representatives

New Zealand Council of Victim Support Groups

Mail address:

C/-Police National Headquarters
PO Box 180
Wellington 6011

Physical address:

C/-Police National Headquarters
180 Molesworth Street
Wellington 6011

	Position	Incumbent's Name	Contact details
Liaison Officer	General Manager Operations	Kevin Tso	T: (04) 470 7118 M: (027) 520 0056 F: (04) 495 3076 E: kevin.tso@victimsupport.org.nz
Other contact	CEO	Tony Paine	T: (04) 470 7118 M: (027) 246 0177 F: (04) 495 3076 E: tony.paine@victimsupport.org.nz

Financial Markets Authority

Mail address:
PO Box 106 672
Auckland 1143

Physical address:
Level 5, Ernst & Young Building
[entrance via 2 Takutai Square, Ernst & Young Building]
52-70 Galway Street, Britomart East Complex
Auckland

	Position	Incumbent's Name	Contact details
Liaison Officer	Acting Head of Stakeholder Management	Scott McMurray	T: (09) 3000 418 M: (029) 222 0776 F: (09) 3000 499 E: scott.mcmurray@fma.govt.nz
Other Contacts	Head of Strategic Intelligence	Adam Hunt	T : (09) 3000 420 M : (022) 326 4868 F : (09) 3000 499 E : adam.hunt@fma.govt.nz
	Senior Adviser	Mark Cubitt	T: (09) 3000 479 M: (021) 0826 3569 F: (09) 3000 499 E: mark.cubitt@fma.govt.nz

Schedule 2

Criteria for Victim Support notification and considerations for the level of victim support provided

The FMA will consider the following criteria when determining whether to notify and refer the details and circumstances of a victim to Victim Support.

The criteria will also be taken into account when Victim Support considers the level of support to be provided to victims.

The criteria are intended to be a guide and non-prescriptive.

- Likelihood of a crime having been committed and as a result there are identified victims.
- Given the nature of the crime, the consequential losses of the victim, and the effect on the victim, whether Victim Support can provide assistance.
- Whether the demographic or characteristics of a victim group suggest Victim Support may be able to assist the victims.
- Whether Victim Support could be of benefit to victims and, or FMA, regarding victim assistance during court proceedings.
- Whether a notification to Victim Support could create a public perception that FMA has formed a view that a crime has been committed.
- The need for secrecy or no public profile so as to avoid alerting suspect/s and, or any prejudice towards an enquiry.
- The circumstances of the nature of the crime and whether there has been any breach of special relationship or trust.
- The characteristics of the victims, whether they are vulnerable, and takes into account their level of distress, regardless of the seriousness of the crime.

Schedule 3

FMA & Victim Support MoU Decision Process

1. Crime notified to FMA involving financial loss to a victim.
2. FMA describes the work and assistance Victim Support can offer people to the Victim and ask the victim whether they would be amenable to their details passed to Victim Support.
3. Upon consideration of the victim's circumstances and requirements, and having received consent, FMA formally refers all relevant details including the circumstances of the victim, the crime, the extent of the loss, and foreseen requirements of support to Victim Support within 10 days of notification.
4. Victim Support makes contact with the victim within 5 days.
5. The Parties shall keep each other informed with regards to relevant and regular updates about the victim, investigation and prosecution, at least once every 3 months. The responsibility of this regular contact rests with the delegated case manager for each of the Parties.
6. Any referral to a third party or agency shall only be by consent of the Parties.