
Memorandum of Understanding
Between
The Information Commissioner
And
Gibraltar Financial Services Commission

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Introduction

1. This Memorandum of Understanding (**the “MoU”**) establishes a framework for cooperation, coordination and information sharing between the Information Commissioner (**the “Information Commissioner”**) and the Gibraltar Financial Services Commission (**the “GFSC”**), collectively referred to as the “parties” throughout this document. In particular, it sets out the broad principles of collaboration and the legal framework governing the sharing of relevant information and intelligence between the parties. The shared aims of this MoU are to enable closer working between the parties, including the exchange of appropriate information, so as to assist them in discharging their regulatory functions.

Legal status and effect

2. Nothing in this MoU shall, or is intended to:
 - a. create any legal or procedural right or obligation which is enforceable by either of the parties against the other; or
 - b. create any legal or procedural right or obligation which is enforceable by any third party against either of the parties, or against any other third party; or
 - c. prevent either of the parties from complying with any law which applies to them; or
 - d. fetter or restrict in any way whatsoever the exercise of any discretion which the law requires or allows the parties to exercise; or
 - e. create any legitimate expectation on the part of any person that either of the parties to this MoU will do any act (either at all, or in any particular way, or at any particular time), or will refrain from doing any act.
3. Nevertheless, the parties are genuinely committed to pursuing the aims and purposes of this MoU in good faith and intend to act in accordance with its terms on a voluntary basis.
4. This MoU is a statement of intent that does not give rise to legally binding obligations on the part of either the Information Commissioner or the GFSC. The arrangements set out in this MoU are subject to what is permitted and required by law. The parties have determined that they do not exchange sufficient quantities of personal data to warrant entering into a separate data sharing agreement, but this will be kept under review.

The role and function of the Information Commissioner

5. The Information Commissioner is the Chief Executive Officer of the Gibraltar Regulatory Authority (“GRA”) established by statute as Gibraltar’s independent regulator to uphold information rights in the public interest, promote openness by public bodies and data privacy for individuals.
6. The Information Commissioner is empowered to take a range of regulatory action for breaches of, inter alia, the following legislation:
 - Data Protection Act 2004 (the “DPA”);
 - Gibraltar General Data Protection Regulation (the “Gibraltar GDPR”);
 - Freedom of Information Act 2018 (the “FOIA”);

- Data Protection (Search and Seizure) Regulations 2006;
 - Communications (Personal Data and Privacy) Regulations 2006; and
 - Freedom of access to Information on the Environmental Regulations 2005 (the “EIR”).
7. Article 57 of the Gibraltar GDPR and Section 124 of the DPA place a broad range of statutory duties on the Information Commissioner, including monitoring and enforcement of the Gibraltar GDPR, promotion of good practice and adherence to the data protection obligations by those who process personal data.
8. The Information Commissioner’s regulatory and enforcement powers include:
- conducting assessments of compliance with the DPA and Gibraltar GDPR;
 - issuing information notices requiring individuals, controllers or processors to provide information in relation to an investigation;
 - issuing enforcement notices, warnings, reprimands, practice recommendations and other orders requiring specific actions by an individual or organisation to resolve breaches (including potential breaches) of data protection legislation and other information rights obligations;
 - administering fines by way of penalty notices in the circumstances set out in section 162 of the DPA;
 - issuing decision notices detailing the outcome of an investigation under FOIA or EIR; and
 - prosecuting criminal offences before the Courts.

Functions and powers of the GFSC

9. The GFSC is an independent regulatory body established as the Financial Services Commission under the Financial Services Commission Act 2007, and which continues to exist in accordance with Part 3 of the Financial Services Act 2019, is responsible for regulating and supervising financial services providers that operate in or from Gibraltar. It has statutory powers of authorising, supervising, licensing, registering and investigating, and has the ability to exercise its powers for the prevention and detection of financial crime.
10. The GFSC’s statutory functions are set out in Section 22 of the Financial Services Act 2019.
11. The GFSC is a risk-based regulator delivering regulatory outcomes in the public interest. The effective and proportionate use of our powers is instrumental in achieving our regulatory objectives, which are the:
- promotion of market confidence;
 - reduction of systemic risk;
 - promotion of public awareness;
 - protection of the good reputation of Gibraltar;
 - protection of consumers; and
 - reduction of financial crime.

Co-operation between the Information Commissioner and the GFSC

12. Subject to any legal or procedural restrictions on the disclosure of information (whether imposed by statute or otherwise) both parties agree that they will alert each other to any potential breaches of

the legislation regulated by the Information Commissioner, within the context of this relationship, discovered whilst undertaking regulatory duties, and provide relevant and necessary supporting information.

13. Similarly, although again subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise), the Information Commissioner will alert the GFSC to any potential breaches of the legislation regulated by the GFSC within the context of this relationship and provide relevant and necessary supporting information.
14. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, both parties will:
 - Communicate regularly to discuss matters of mutual interest (this may involve participating in multi-agency groups to address common issues and threats); and
 - Consult one another on any issues which might have significant implications for the other organisation.
15. Both parties will comply with the general laws they are subject to, including, but not limited to, local data protection laws; the maintenance of any prescribed documentation and policies; and comply with any governance requirements in particular relating to security and retention, and process personal data in accordance with the statutory rights of individuals.
16. The GFSC and the Information Commissioner will exchange information on relevant issues of interest to the extent permitted by law, and as appropriate and relevant to their respective objectives. This may include, but is not limited to:
 - information about investigations and notifying the other about any relevant action taken against a person or firm by one regulator which may be relevant to the functions of the other;
 - information held by either regulator regarding fraud/criminal or any other activity that might cast doubt on the fitness and propriety of a GFSC authorised regulated firm, certified individuals or an approved person; or
 - information or intelligence held by the Information Commissioner which indicates that there may be a failure of a GFSC-authorised regulated firm's regulated activities (including the implementation or effectiveness of its systems and controls).
17. The GFSC and the Information Commissioner may request information from each other and will include the details of the information sought and why it would assist them to carry out their functions. Each may suggest a reasonable deadline for response, including an explanation of any urgency.
18. The GFSC and the Information Commissioner may consult and co-ordinate in respect of reviews, calls for evidence and recommendations directed towards both parties, where appropriate. In addition, if one regulator considers that information it has gathered will be materially relevant to the other, it will notify the other to enable the other to request disclosure of such information.
19. In the case of a major incident of mutual interest at a GFSC authorised regulated firm, the GFSC and Information Commissioner will work together in line with agreed incident protocol in order to secure the best outcomes for consumers and ensure incidents are dealt with in a co-ordinated and efficient manner.

Purpose of information sharing

20. The purpose of this MoU is to enable both the Information Commissioner and the GFSC to share relevant information which enhances their ability to exercise their respective functions.
21. This MoU should not be interpreted as imposing a requirement on either party to disclose information in circumstances where doing so would breach their statutory responsibilities. In particular, each party must ensure that any disclosure of personal data pursuant to these arrangements fully complies with both the Gibraltar GDPR and the DPA. The MoU sets out the potential legal basis for information sharing, but it is for each party to determine for themselves that any proposed disclosure is compliant with the law.

Legal basis for sharing information

Information shared by the GFSC with the Information Commissioner

22. The GFSC may disclose confidential information to the Information Commissioner to facilitate the carrying out of a statutory function of the Information Commissioner.
23. The Information Commissioner's statutory function relates to the legislation set out at paragraph 6, and this MoU governs information shared by the GFSC to assist the Information Commissioner to meet those responsibilities. To the extent that any such shared information is to comprise personal data, as defined under the Gibraltar GDPR and DPA, the GFSC is a Data Controller so must ensure that it has legal basis to share it and that doing so would otherwise be compliant with the data protection principles.
24. The GFSC may disclose confidential information only to the extent that doing so appears to the GFSC to be necessary under Part 5 of the Financial Services Act 2019 (the "Act"). Furthermore, under Section 47 of the Financial Services Act 2019, the GFSC may enter into cooperation agreements as prescribed establishing procedures for the exchange of information.
25. Section 139 of the DPA may permit the GFSC to share information with the Information Commissioner.
26. Under this particular provision, the GFSC is not prohibited or restricted from disclosing information to the Information Commissioner by any other enactment or rule of law provided it is "information necessary for the discharge of the Commissioner's functions".

Information shared by the Information Commissioner with the GFSC

27. The Information Commissioner, during the course of his activities, will receive information from a range of sources, including personal data. He will process all personal data in accordance with the principles of the Gibraltar GDPR, the DPA and all other applicable legislation. The Information Commissioner may identify that information he holds, which may include personal data, ought to be shared with the GFSC as it would assist them in performing their functions and responsibilities.
28. Section 140 of the DPA states that information obtained by the Information Commissioner in the course of, or for the purposes of, discharging his functions can only be shared with others if there is lawful authority to do so. Section 140 of the DPA sets out the circumstances in which the Information Commissioner will have the lawful authority to share that personal data with the GFSC. In particular, it will be lawful in circumstances where:

- The sharing was necessary for the purpose of the Information Commissioner discharging his functions (section 140(2)(c));
 - The sharing was made for the purposes of criminal or civil proceedings, however arising (section 140(2)(e)); and
 - The sharing was necessary in the public interest, taking into account the rights, freedoms and legitimate interests of any person (section 140(2)(f)).
29. The Information Commissioner will therefore be permitted to share information with the GFSC in circumstances where he has determined that it is reasonably necessary to do so in furtherance of one of those grounds outlined at paragraph 23. In doing so, the Information Commissioner will identify the function of the GFSC with which that information may assist and assess whether that function could reasonably be achieved without access to the particular information in question.
30. Where information is to be disclosed by either party for law enforcement purposes under section 44(3)(a) or (b) of the DPA, then they will only do so in accordance with an appropriate policy document as outlined by section 51 of the DPA.
31. Where a request for information is received by either party under data protection laws or the FOIA, the recipient of the request will seek the views of the other party where the information being sought under the request includes information obtained from, or shared by, the other party. However, the decision to disclose or withhold the information (and therefore any liability arising out of that decision) remains with the party in receipt of the request as Data Controller in respect of that data.

Policies, guidance and GFSC rule-making

32. Each regulator will make rules and / or policies in pursuit of their separate objectives. The parties will seek to understand and where appropriate collaborate and co-ordinate work on their respecting policies that have a material effect on the other's objectives. This may include, but not be limited to, work on:
- regulatory policy;
 - industry standards and recommendations;
 - regulatory materials, such as codes of practice, rules and guidance;
 - assessments of the landscape and risk analysis to inform policy-making;
 - GFSC consumer alerts concerning advertising;
 - competition in the financial advertising sector;
 - innovation initiatives; and
 - any other projects that may be identified on an ad hoc basis, particularly to aid understanding of how the two regulators work together.
33. The parties will liaise closely to ensure that their separate awareness activities are complementary. Where appropriate, both regulators will share communication and publication plans to facilitate joined up messages and effective resource planning.

Investigation and enforcement

34. The parties recognise that there are areas in which they have complementary functions and powers. They will therefore endeavour to ensure that in these cases, the most appropriate body or bodies will commence and lead investigations. To the extent permitted by law and having regard to their respective powers, expertise and resources, they will seek to ensure that in cases of investigations, the parties will notify each other of significant developments where the other is likely to have an interest. Where appropriate, the parties will discuss the steps they propose to take and ensure co-ordination takes place in a timely manner, where possible, allowing for a proper exchange of views.
35. The parties may refer a matter for action if the other body is considered more appropriate to deal with the matter. Any such referral will include the action sought and the legal powers it considers are available to the other. Where the other party determines not to proceed, an explanation will be provided, where possible.
36. Where the parties agree that an investigation should be carried out by both regulators, it will usually be appropriate that both investigations proceed in parallel. However, in appropriate circumstances, they will consider whether the particular facts of the matter, as they are known at that time, suggest that one party's investigation should proceed before the other's.
37. Where either party carries out any subsequent investigation and proceedings alone, that party will keep the other regularly updated on material aspects of the progress of the investigation.
38. If a decision is made by either party to take action against a subject, the GFSC and the Information Commissioner should consider whether it is possible and would be appropriate to co-ordinate publication of applicable enforcement announcements so that both parties publish the outcome of their investigations simultaneously. In any event, the GFSC and the Information Commissioner will endeavour to give the other appropriate notice of any press release or other public statement it intends to make relating to enforcement cases in which the other may have an interest, no later than 24 hours prior to publication unless there are overriding reasons which prevent or delay such notice.
39. Relevant GFSC and the Information Commissioner's staff will, where appropriate, seek to maintain general awareness and understanding of each other's functions and needs and will liaise with each other to ensure that issues are appropriately identified.

Method of exchange

40. Appropriate security measures shall be agreed to protect information transfers in accordance with the sensitivity of the information and any classification that is applied by the sender.

Confidentiality and data breach reporting

41. Where confidential material is shared between parties, it will be marked with the appropriate security classification.
42. Where one party has received information from the other, it will seek consent from other party before passing the information to a third party or using the information in an enforcement proceeding or court case.
43. Where confidential material obtained from, or shared by, the originating party is wrongfully disclosed by the party holding the information, this party will bring this to the attention of the originating party without delay. This is in addition to obligations to report a personal data breach under the Gibraltar GDPR and/or DPA where personal data is contained in the information disclosed.

44. In accordance with relevant legislation, the GFSC and the Information Commissioner will protect the confidentiality and sensitivity of all unpublished regulatory and other confidential information received from the other regulator, and maintain effective controls designed to minimise the risk of inappropriate disclosures.
45. Where one Party has received information from the other, it may use the information for purposes set out in requests for information or otherwise agreed, but will seek consent from the other Party before passing the information to a third party unless the sending Party has placed additional restrictions.
46. The GFSC and the Information Commissioner will liaise where relevant, to the extent permitted by law and having regard to their respective objectives, on responding to enquiries from the public, including FOIA requests and will consult each other before releasing information originally belonging to the other.
47. If a Party becomes aware that information passed to it under this MoU may be subject to a legally enforceable demand to disclose, it will, to the extent permitted by the law, inform the other Party of the situation.

Duration and review of the MoU

48. The Information Commissioner and the GFSC will monitor the operation of this MoU and will review it biennially.
49. Any minor changes to this MoU identified between reviews may be agreed in writing between the parties.
50. Any issues arising in relation to this MoU, will be notified to the point of contact for each organisation.

Key contacts

51. The parties have both a Single Point Of Contact (SPOC) who is responsible for managing this MoU. Those individuals will maintain an open dialogue between each other in order to ensure that the MoU remains effective and fit for purpose. They will also seek to identify any difficulties in the working relationship, and proactively seek to minimise the same.
52. The nominated SPOC for the GRA is the Director for Operations and Information Rights.
53. The nominated SPOC for the GFSC is the Director of Central Services.

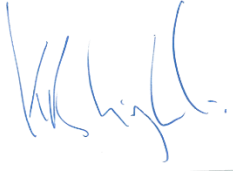
Commencement and Termination

54. This MoU will take effect when the Parties have signed it and will continue to have effect until terminated by either party giving 30 days' advance written notice to the other. It may be amended by agreement in writing.
55. In the event of the termination of this MoU, information obtained under this MoU will continue to be treated confidentially in the manner prescribed under the Act.

Publication

56. Either, or both, of the Parties may make a copy of this MoU, or the text of it, publicly available.


Signatories



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for the Gibraltar Financial Services Commission
Date: 09/11/2023

Kerry Blight
Chief Executive Officer



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for the Gibraltar Regulatory Authority
Date 09/11/2023

John Paul Rodriguez
Chief Executive Officer