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For the attention of: Malcolm Le May, Chief Executive Officer

13 July 2021

Dear Malcolm

**Provident SPV Limited (the "Company") – Proposed Scheme of Arrangement pursuant to Part 26 of the Companies Act 2006 (the "Scheme")**

- 1.1 We refer to the Company's application to the High Court of Justice of England and Wales for an order sanctioning the Scheme.
- 1.2 We are writing to confirm to the Company the FCA's position in respect of the Scheme.

**Summary of the FCA's position**

- 1.3 The FCA has assessed the Scheme by reference to the FCA's statutory objectives and has concluded that the Scheme is inconsistent with the FCA's rules, principles and objectives. Therefore, **the FCA does not support the Scheme** and has summarised the serious concerns it has regarding the Scheme in this letter.
- 1.4 However, in this case the FCA has decided not to appear in Court to oppose the sanction of the Scheme as a matter of company law. The FCA's assessment of the Scheme against its statutory objectives is a distinct, and necessarily broader, assessment than whether the Court will sanction the Scheme as a matter of company law. In this case, the FCA's decision not to oppose in Court is based on two key factors:
  - (a) **The Lenders face an imminent insolvency in which many Redress Creditors would receive less than under the Scheme:** the Group has provided evidence to Redress Creditors that PPC and Greenwood Personal Credit Limited (the "**Lenders**") would be cash flow insolvent if the Scheme does not proceed and that, in insolvency proceedings, many customers are expected to receive less (if any) benefit in respect of their redress claims than they would under the Scheme. Therefore, the FCA considers on the evidence presented by the Group that approval of the Scheme would result in a better outcome for many consumers than the most likely alternative of an imminent insolvency.
  - (b) **The Lenders are not continuing their business and there appears to be no unfair benefit to the Group and its stakeholders at the expense of Redress Creditors:** The Company announced fundamental changes to the Scheme during May 2021, shortly after the FCA made arguments at the convening hearing that the Scheme was not sufficiently fair to be approved by the Court. In particular, among other changes, PPC will not be continuing its business and therefore the Group and its stakeholders will not be retaining a valuable stake in a continuing profitable business at the expense of Redress Creditors.

- 1.5 As soon as practicable on the date of this letter we propose to publish this letter on the FCA's website. Please note that unless otherwise defined, capitalised terms have the meaning ascribed to them in the draft Scheme.

### **Consultation on the FCA's role in assessing Schemes**

- 1.6 As you will be aware, the FCA has significant concerns in general about the use of schemes of arrangement by regulated firms to avoid paying customers redress in full.

- 1.7 The FCA intends to consult later in the year on guidance regarding the FCA's approach to schemes and other similar restructuring tools, which is expected to include where firms seek to compromise redress through arrangements under company law.

### **2. HOW DOES THE FCA APPROACH THE ASSESSMENT OF SCHEMES?**

- 2.1 It has been customary for regulated firms to request a "letter of non-objection" from the FCA in respect of any scheme of arrangement they intend to propose. Provident Financial plc (the "**Group**" or "**Provident**") initially requested a "letter of non-objection" in respect of the Scheme. Following initial feedback from the FCA on the Scheme as it was formed at that time, Provident subsequently withdrew its request for a "letter of non-objection" but proceeded with the Scheme in any event.

- 2.2 This letter is not a "letter of non-objection".

- 2.3 Nevertheless, as part of its usual supervisory functions, the FCA has considered and continues to assess the Scheme and its terms, as the Scheme has evolved, by reference to the FCA's statutory objectives under FSMA, which for ease, are enclosed with this letter (Annex 1). As part of this, pursuant to the consumer protection objective, the FCA is duty-bound to seek to secure an appropriate degree of protection for consumers and to ensure the UK financial system is sound, stable and resilient.

- 2.4 In this case, PPC's main business involved providing door-step lending with high interest loans to persons likely to have experienced financial difficulties, many of whom may therefore be financially vulnerable persons with some additionally having health, physical, mental or other characteristics of vulnerability. To give an indication of the nature of the loans offered, we note that PPC currently states on its website that the representative annual percentage rate in relation to the loans it offers is in the range of 299.3% to 1,557.7% APR (variable). It is therefore especially important that the Scheme is openly and clearly explained, and that it works as a customer might expect, i.e. to provide redress as proposed by the Scheme.

- 2.5 The Company has provided to the FCA copies of the draft Scheme documentation, including the Scheme document, the Explanatory Statement, the Supplementary Explanatory Statement, and the Company's evidence in support of the Scheme. As appropriate, the FCA has also made formal requests of the Group to provide additional information and documents in relation to the proposed design, implementation, costs and likely outcome of the Scheme, particularly in relation to customers to whom redress may be payable.

- 2.6 As part of its consideration to date, the FCA has had regard to:

- (a) information and documents provided by the Company (as above);
- (b) the FCA's wider knowledge of the Company, the Group and its business; and
- (c) the FCA's experience of similar proposals and/or arrangements in respect of other regulated consumer credit businesses.

- 2.7 As to the factors that the FCA generally considers, the FCA's general approach and background on the Company is set out in more detail in Annex 2.

### 3. THE FCA'S CONCERNS REGARDING THIS SCHEME

3.1 We summarise below the serious concerns the FCA has regarding the Scheme.

#### *A. Customers with valid redress claims stand to receive significantly less than the value of their claims*

3.2 Noting the FCA's consumer protection objective (to secure an appropriate degree of protection for consumers) and the integrity objective (to protect and enhance the integrity of the UK financial system), the FCA has significant concerns about schemes of arrangement being used to circumvent paying customers their full redress entitlement in the way proposed by the Scheme.

#### *B. The Group could contribute more to paying Redress Creditors but has decided not to do so*

3.3 We note that the Group will make available to the Company the Compensation Fund in an amount of £50 million. The Group has stated clearly that it does not intend to increase its contribution or share profits with the Redress Creditors, such that the Redress Creditors are left with a "take it or leave it" choice between a very low recovery under the Scheme or a lower recovery (if any) in an insolvency.

3.4 The Group argues it is not legally required to increase its offer or provide any funding at all. While a contribution from the Group is welcome, we believe that there is scope for the Group to increase the level of funding to the Scheme, in turn increasing the expected return to Scheme Creditors, including by providing a share of the Group's profits to pay Redress Creditors. The reason that the Group is not contributing more is that it has made a commercial judgment not to increase the funding because it could not justify that to its investors. This commercial assessment has been made at the ultimate expense of the Lenders' Redress Creditors.

3.5 We note that the Company has summarised an explanation for why the Group is making any contribution at all, by reference (broadly) to the desire to avoid an insolvency for reputational reasons, to assist staff morale and to avoid any potential disruption to the Group's commercial contracts. However, the Company does not attempt to value the Scheme's benefit to the Group and has explained that its choice of £50m as the contribution is a matter of "judgment rather than science". While the EY Report commissioned by PPC provides evidence that the Group's equity stake in PPC may be valueless, absent a valuation exercise on the wider benefits to the Group, the £50m contribution is a potentially arbitrary figure which, we note, happens to coincide with the amount originally proposed to be contributed by the Group to the Scheme prior to the changes announced on 10 May, when the Scheme had provided a means for PPC to continue in business in the future. While the FCA has no reason to believe in this case that the Group will obtain benefits from the Scheme that exceed £50m, the FCA would expect that regulated firms proposing Schemes provide clear explanations both to the FCA and to Redress Creditors on the value of the benefits that they are receiving from any scheme of arrangement.

#### *C. The Group's withdrawal of its commitment to financially support PPC*

3.6 The FCA understands that the Group had previously made a commitment to provide financial support to allow PPC to meet its liabilities as they fell due until January 2022. This commitment was given in a Letter of Comfort from certain companies in the Group to PPC and which the Group states was and is not legally binding, as is common for such commitments. We note the Letter of Comfort was provided on 29 December 2020. However, very shortly after this on 11 January 2021, a detailed proposal for a scheme of arrangement was presented to the FCA.

- 3.7 The FCA understands that the Group has decided to withdraw PPC's access to funding in the event the scheme is not approved. The Group's decision to withdraw that support and not honour its commitment to PPC under the Letter of Comfort - which the Group believes is not legally binding - means that PPC would, the FCA understands, now have to enter insolvency proceedings in the short term if the Scheme does not proceed. It is this sequence of events that has placed both Redress Creditors and the FCA in a "take it or leave it" position concerning opposition to the sanction of the Scheme, which the FCA considers to be unsatisfactory.

*D. The Group is subject to ongoing FCA enforcement action*

- 3.8 Separately, the Company will be aware that in March 2021 the FCA launched an investigation into PPC's conduct, focusing on the consideration of affordability and sustainability of lending to customers, as well as the application of a Financial Ombudsman Service ("**FOS**") decision into the Lenders' complaint handling process, in the period between February 2020 and February 2021. The start of the investigation period relates to the FOS decision which was taken in February of last year. Although the ongoing investigation is in its early stages all possible outcomes remain, including closing the investigation with no further action, a public censure, a penalty, redress, the removal of permissions and/or restriction of activities. It is too early to say how long this investigation will take, but typically investigations take at least 12 to 18 months for the FCA to reach a conclusion.
- 3.9 Accordingly, while the FCA continues to reserve its position should facts or circumstances change, the FCA does not presently expect that the investigation would prevent the Scheme being sanctioned nor imperil the solvency of the Group at such a time that a greater contribution to the Scheme could not be made. However, the FCA does have concerns with the use of schemes of arrangement to avoid paying customers redress in full when there are investigations ongoing into how these redress liabilities arose in the first place.

*E. Lack of consistency of treatment with other unsecured creditors and intercompany loans*

- 3.10 Under the Scheme the Redress Creditors are anticipated to receive a very small fraction of their Redress Claims. In those circumstances, the FCA is concerned that the claims of the other unsecured creditors of PPC will not be similarly compromised (or compromised at all) *and indeed are expected to be kept whole.*
- 3.11 The Group has provided an explanation that some of these payments are necessary in order to wind down PPC. However, in addition the Group has suggested that interest on certain intercompany loans would be paid by PPC during the wind-down period. The Group has provided no justification for this interest being paid at a time when the Redress Creditors, whose claim rank equally with such loans, are being subjected to a significant haircut. Moreover, the FCA understands, based on information provided by the Group and presented to creditors in the EY Report, that the rights to repayment of such loans were proposed to be subordinated to ordinary unsecured claims (i.e. they would be paid only after redress claims are paid in full in an insolvency) and that this is the basis for the assessment in EY's report that the intercompany loans owing to the Group have zero value. The Group has not disclosed to Redress Creditors that it proposes to pay interest on inter company loans during the wind down period, nor has it disclosed to the FCA or Redress Creditors the quantum of the interest payments and the justification for paying them.

*F. The FCA believes some Redress Creditors may be worse off under the Scheme than in an insolvency*

- 3.12 Although the Company explains why many Redress Creditors may be better off under the Scheme, the FCA is concerned that certain customers may in fact be worse off under the Scheme when compared to the position in the counterfactual insolvency. This concern arises in relation to customers with outstanding loan balances and valid redress claims who do not engage with the Scheme at all within the requisite time period and, in particular, by the Claims Submission Deadline (being six months after date on which the Scheme comes into effect). Those customers lose their rights in return for no compensation and are potentially worse off than they would be in an immediate insolvency counterfactual. This is because the effect of the Scheme will be to release any right those customers have to assert equitable set off rights in relation to their redress claims in respect of outstanding balances if they have not submitted a claim before the Claims Submission Deadline and will therefore be pursued for the full amount of their loan balance in future. In the FCA's experience, in consumer schemes of this nature response rates from customers can be low so this may, in practice affect a significant number of customers.
- 3.13 By contrast, in any insolvency counterfactual, insolvency set-off would apply automatically and mandatorily and would necessarily be taken into account by any insolvency officeholder when adjudicating claims, collecting in assets and making distributions. In particular, no bar date would apply which would deprive creditors of their rights to set-off. The existence of set-off rights would in practice prevent those customers from being pursued for their outstanding loan balances by an insolvency officeholder up to the value of their redress claims.
- 3.14 Further, under the Scheme, a customer who has a Transferred Loan (i.e. a loan that has been sold to a Debt Purchaser) will not automatically receive a reduction of the balance of such loan by the amount of their Redress Claim unless the Company first enters into a Balance Reduction Agreement with the applicable Debt Purchaser in respect of the relevant loan (see Clause 2.7 of the Scheme). To the extent no such agreement is ever entered into by the Company with the Debt Purchaser, a customer will continue to owe the full amount of their outstanding balance to the Debt Purchaser. We note that the Group has entered into non-binding letters of comfort with its Debt Purchasers, but legally binding agreements are yet to be entered into.
- 3.15 The Group has previously set out its view that the preservation of equitable set-off rights beyond the Claims Submission Deadline would involve extra costs and would affect the ability of the Lenders to sell the loans in the future. The FCA disagrees that the increased costs nor any intention to sell the loans to another party (who may decide not to recognise the equitable set-off rights) is a sufficiently good reason not to recognise customers' rights.
- 3.16 Ordinarily, outside of the Scheme, a customer would be able to assert equitable set-off against the Debt Purchaser on the basis that an assignment of debt is subject to pre-existing equities including any rights of equitable set-off. Under the Scheme, the release to be given by Scheme Creditors carves out any rights of equitable set off that a Scheme Creditor who submits a Scheme Claim by the Claims Submission Deadline may have against the Lenders or any other person (allowing a Scheme Creditor to assert equitable set off as a defence to a debt enforcement claim brought by a Debt Purchaser or any person other than the Company or the Lenders).

- 3.17 However, certain customers are still at risk of being prejudiced in future where their loan has been sold to a Debt Purchaser, because (i) such customers would have to assert their rights to equitable set-off, which in practice they may not be aware of; and (ii) as noted above, in the event that such a customer does not submit a claim by the Claims Submission Date, the Scheme purports to release their rights of equitable set-off entirely.
- 3.18 The result of the above is that certain cohorts of Redress Creditors may in fact be worse off under the Scheme than in an insolvency, which the FCA considers inappropriate and unfair.

#### *G. Low turnout*

- 3.19 We understand that around 10 per cent of Scheme Creditors have as at the date of this letter voted on the Scheme, although this figure may increase (if potentially only marginally) before the vote deadline on [19 July 2021]. While this may be broadly consistent with voting proportions for similar schemes of arrangement, the FCA is concerned that regulated firms do all that they can to ensure that their customers are engaged in the Scheme process, vote and subsequently submit claims, particularly where failure to engage with the Scheme will result in Redress Creditors losing their rights to claim redress.
- 3.20 The FCA notes the recent efforts of the Company to increase engagement with Scheme Creditors, which are explained in the Explanatory Statement. The FCA expects that PPC will do all that it can to encourage the submission of claims by Redress Creditors.

#### *H. Lack of negotiation with Scheme Creditors*

- 3.21 The FCA raised concerns at the convening hearing that Redress Creditors had not been consulted on the terms of the Scheme and that those terms therefore arose out of a unilateral decision by the Group rather than any negotiation with the Redress Creditors. We note the decision by the Company to appoint a customer advocate and law firm to provide Redress Creditors with advice on the Scheme. However, the FCA remains concerned that this falls some way short of the early engagement, consultation and negotiation with Redress Creditors concerning the Scheme terms that the FCA would expect.
- 3.22 Separately, the FCA notes the decision of the Court in the recent *Amigo* scheme of arrangement concerning the consultation and negotiation required when proposing schemes. No distinction is drawn in that judgment between schemes where there is negotiation concerning an alternative restructuring concerning the equity in the business (as was the case in *Amigo*) and those schemes (like this Scheme) where it is submitted there is no equity value in the business and the Scheme involves a wind-down of the business. Accordingly, the FCA would expect that firms do engage and consult early with their redress creditors and negotiate with them the terms of schemes of arrangement. The FCA is concerned that this appears not to have been the case with the Scheme.

#### *I. Voting on the Scheme*

- 3.23 The FCA understands that the Company is seeking to determine the likely validity of creditor claims for voting purposes. However, the FCA is concerned that (i) a customer may vote on the Scheme irrespective of whether that customer actually has a Redress Claim, and (ii) the weighting applied to a Redress Creditor's vote by reference to a certain percentage of their net compensation may not be a fair basis on which to calculate voting values.
- 3.24 For example, a customer that does not have an upheld loan but has met one of the Tier 3 filters will still receive 10% of their net compensation as their vote weighting. Very little evidence has been produced by the Company to justify the different proposed weightings applied to claims for voting purposes.

- 3.25 This could potentially create a misalignment between the actual Redress Creditors and the customers who in fact voted on the Scheme. In other words, some customers may vote on the Scheme when they are not, in fact, Redress Creditors, and/or may be given a vote weighting entirely disproportionate to the actual value of their claim.

*J. The Company as a special purpose vehicle*

- 3.26 In order to effect the Scheme, the Group incorporated the Company to assume joint liability (by deed poll) for all liabilities capable of being claimed against each of the Lenders under the Scheme solely for the purpose of proposing the Scheme.
- 3.27 The FCA acknowledges that such a structure (or similar) has been used in other schemes of arrangement that have been sanctioned by the Court and may in this case be considered by the Company to be necessary in order to overcome other contractual restrictions on the Group.
- 3.28 However, the FCA remains concerned by the use of such a structure in schemes of arrangement involving ordinary consumers. In particular, the FCA is concerned that customers – whom it should be noted are involuntary creditors of the Lenders – may be confused by a scheme proposed by a company with which they have never contracted (or even heard of), but which they are told may now owe them redress, and through which they will also release their claims against the other Group entities. Moreover, the use of a special purpose vehicle adds an additional layer of complexity, including when considering how the rights of Redress Creditors compare with an insolvency (e.g. whether set-off rights have been properly restored following the assumption of liabilities by the special purpose vehicle, which separates the liabilities from the loans). This may not be appropriate for ordinary consumers and may obscure the way their rights are being treated in the Scheme and may have an effect which is equivalent to liabilities from regulated activity being transferred to a thinly capitalised company which is not authorised by the FCA.

*Confirmation of FCA position regarding other points raised at the Convening Hearing*

- 3.29 The FCA appeared by counsel at the convening hearing for the Scheme on 22 April 2021. At that hearing, the FCA raised a concern that the allocation of losses and the division of benefits among stakeholders in the Scheme appeared not to be fair, not least because the objective of the Scheme at that stage was for PPC to continue to trade and PPC's shareholders were retaining the entire benefit of the ongoing profitability of PPC. The FCA also raised, at that time, a concern with the fact that no proper justification or explanation had been given to the Redress Creditors for why it was fair to allocate the benefits in that way.
- 3.30 At that stage, the FCA specifically invited the Court to consider these questions at the sanction hearing. For completeness, for the reasons given above and in particular as a result of the fundamental changes to the purpose of the Scheme announced by the Group on 10 May 2021, the FCA does not now intend to appear at the sanction hearing to make any further submissions to the Court on these issues or any other issues raised at the convening hearing.

*Other points raised during the FCA's engagement on the Scheme*

- 3.31 In the course of the FCA's engagement with the Group on the Scheme and its assessment of the Scheme against the FCA's statutory objectives, the FCA has made a number of other points and raised other concerns on the Scheme. For the avoidance of doubt this letter does not purport to set out a complete and exhaustive list of all of the FCA's remaining concerns or issues regarding the Scheme.

#### 4. **'PHOENIXING'**

- 4.1 Since the convening hearing concerning the Scheme, the Group has made significant changes to the Scheme. In particular, the Group announced on 10 May 2021 that it is withdrawing from the home credit and high-cost short term credit markets and that PPC will discontinue its business and be dissolved.
- 4.2 We note, however, that the Group has incorporated a new entity within the Group to provide a mid-cost (rather than high-cost) personal loan product which, we understand, will apply to the FCA for authorisation. The Group states that these businesses are separate and different to the business which has been conducted by the Lenders under the Group's ownership. We understand any new personal loans lending product that the Group may in the future launch will:
- (a) address a different market and customer base to the High-Cost Short Term Credit products that PPC focussed on;
  - (b) not use PPC customer data;
  - (c) not operate under the "Provident Personal Credit", "Greenwood", "Glo" or "Satsuma" brands;
  - (d) not use or benefit from any of the assets of PPC - although we understand there are some members of PPC's management and staff being given jobs in the new business.
- 4.3 The FCA considers it important to stress that it has very serious concerns about any use of schemes of arrangement to achieve 'phoenixing' or outcomes which could be perceived to involve phoenixing. The FCA has previously set out its policy regarding phoenixing and that avoidance of any type of liabilities to consumers is unacceptable.<sup>1</sup> Given the changes made to the Scheme and the confirmations provided by the Group, the FCA does not currently believe that the Group is engaged in 'phoenixing' via the Scheme, but intends to continue to monitor this issue in the context of our assessment of any new business' application for lending authorisations.

#### 5. **RESERVATION OF RIGHTS**

- 5.1 The FCA reserves its position should facts or circumstances change. In light of the concerns raised above and the ongoing investigation, the FCA reminds the Group of the importance of ensuring that the Lenders continue to meet threshold conditions on an ongoing basis. In the event the Lenders are unable to meet the threshold conditions, the FCA may take further action if appropriate.
- 5.2 Please confirm that this letter will be included in the Company's evidence to the Court for the sanction hearing on 30 July 2021. We would also ask that you consider your disclosure obligations.

Yours faithfully,



**Sheldon Mills**  
**Executive Director of Consumers and Competition**

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<sup>1</sup> <https://www.fca.org.uk/firms/regulated-financial-advice-firms-and-individuals-attempt-avoid-their-redress-liabilities>



## **ANNEX 1:**

The FCA's statutory objectives under FSMA 2000:

1. The FCA's strategic objective is: ensuring that relevant markets function well (see s.1B(2) FSMA 2000). 'Relevant markets' includes the markets for regulated financial services (see s. 1F FSMA 2000).
2. The FCA's operational objectives are the consumer protection objective; the integrity objective and the competition objective (s.1B(3) FSMA 2000).
3. The FCA's consumer protection objective is securing an appropriate degree of protection for consumers (s.1C FSMA 2000). In considering what degree of protection for consumers may be appropriate the FCA must have regard to:
  - a. the differing degrees of risk involved in different kinds of investment or other transaction;
  - b. the differing degrees of experience and expertise that different consumers may have;
  - c. the needs that consumers may have for the timely provision of information and advice that is accurate and fit for purpose;
  - d. the general principle that consumers should take responsibility for their decisions;
  - e. the general principle that those providing regulated financial services should be expected to provide consumers with a level of care that is appropriate having regard to the degree of risk involved in relation to the investment or other transaction and the capabilities of the consumers in question;
  - f. the differing expectations that consumers may have in relation to different kinds of investment or other transaction;
  - g. any information which the consumer financial education body has provided to the FCA in the exercise of the consumer financial education function;
  - h. any information which the scheme operator of the ombudsman scheme has provided to the FCA pursuant to section 232A.
4. The integrity objective is: protecting and enhancing the integrity of the UK financial system (s.1D FSMA 2000). The integrity of the UK financial system includes:
  - a. its soundness, stability and resilience,
  - b. its not being used for a purpose connected with financial crime,
  - c. its not being affected by behaviour that amounts to market abuse,
  - d. the orderly operation of the financial markets, and
  - e. the transparency of the price formation process in those markets.

5. The competition objective is: promoting effective competition in the interests of consumers including in the markets for regulated financial services or services provided by a recognised investment exchange in carrying on regulated activities in respect of which it is by virtue of section 285(2) exempt from the general prohibition (s.1E FSMA 2000). The matters to which the FCA may have regard in considering the effectiveness of competition in the market for the services mentioned above include:
- a. the needs of different customers who use or may use those services, including their need for information that enables them to make informed choices,
  - b. the ease with which consumers who may wish to use those services, including consumers in areas affected by social or economic deprivation, can access them,
  - c. the ease with which consumers who obtain those services can change the person from whom they obtain them,
  - d. the ease with which new entrants can enter the market, and
  - e. how far competition is encouraging innovation.

## **ANNEX 2:**

### *Background on the Company and the FCA's role*

1. The Company is a limited liability company established on 2 November 2020 for the purposes of the Scheme and is a member of the Provident group of companies under (and including) Provident Financial plc. Certain entities in the Group (including Provident Personal Credit Ltd ("**PPC**")) are authorised by The Financial Conduct Authority (the "**FCA**") to engage in certain regulated activities. Greenwood Personal Credit Limited previously traded under interim permissions, which lapsed in 2015. As a result, the FCA is or was the conduct regulator of certain Group entities under the Financial Services and Markets Act 2000 ("**FSMA**").
2. Provident first contacted the FCA in September 2020 to inform the FCA regarding the increasing number of redress claims against the Lenders and that it was considering its options regarding those claims. On 11 January 2021, Provident shared a detailed proposal for a scheme with the FCA. Since that time, the FCA and Provident, and their respective legal advisors Ashurst LLP and Clifford Chance LLP, have been engaged in regular discussions regarding the Company's proposals and the key aspects of the Scheme, including importantly, how customers (borrowers and guarantors, past or present) will be affected.

### *The FCA's approach to considering schemes of arrangement in general:*

3. The FCA has a duty (s.1B FSMA 2000) in discharging its general functions, to act, in so far as is reasonably possible, in a way which is compatible with its strategic objective and which advances one or more of its operational objectives (see Annex 1). The FCA's general functions include determining the general policy and principles by reference to which it performs particular functions under FSMA 2000 including the policy and principles by which it will carry out its functions in relation to arrangements for the supervision of the firms which the FCA regulates, and in particular the functions of considering what, if any, representations to make to the Court in relation to arrangements proposed by an FCA-regulated firm, and also the FCA's functions in responding to consultation requests from the PRA.
4. The FCA also has a separate duty to discharge its general functions in a way which promotes effective competition in the interests of consumers, in so far as that is compatible with acting in a way which advances the consumer protection objective or the integrity objective (s1B(4) FSMA 2000).
5. As part of its normal risk-based and judgement-led approach to supervision, the FCA will assess, taking account of all relevant circumstances of a particular case, whether a scheme proposed by an FCA-regulated firm poses any threat to any of the FCA's operational objectives, to its duty to promote competition described in paragraph 4 above, or threatens to be inconsistent with its strategic objective.
6. The FCA will consider whether the scheme proposal is compatible with FCA rules, including the FCA's Principles for Businesses (enclosed at Annex 3). In particular, the FCA assesses the compatibility of schemes of arrangement with Principle 6 (treating customers fairly), Principle 7 (customers' information needs) and Principle 8 (managing conflicts of interest).

### **ANNEX 3:**

#### **FCA Principles for Businesses**

<b>1</b> Integrity	A firm must conduct its business with integrity.
<b>2</b> Skill, care and diligence	A firm must conduct its business with due skill, care and diligence.
<b>3</b> Management and control	A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
<b>4</b> Financial prudence	A firm must maintain adequate financial resources.
<b>5</b> Market conduct	A firm must observe proper standards of market conduct.
<b>6</b> Customers' interests	A firm must pay due regard to the interests of its customers and treat them fairly.
<b>7</b> Communications with clients	A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.
<b>8</b> Conflicts of interest	A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.
<b>9</b> Customers: relationships of trust	A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.
<b>10</b> Clients' assets	A firm must arrange adequate protection for clients' assets when it is responsible for them.
<b>11</b> Relations with regulators	A firm must deal with its regulators in an open and cooperative way and must disclose to the FCA appropriately anything relating to the firm of which that regulator would reasonably expect notice.