

# Applications to Obtain Access to the Register of Members of Building Societies

## Overview

The Building Societies Regulatory Guide (BSOG) was revoked on 2 April 2015 following a short consultation. This page replaces the guidance that was previously available to firms at BSOG 1A, to continue to provide information to building societies and members of building societies about the exercise of the right to obtain access to the registers of members of building societies. The remainder of the information previously located within BSOG is available from the PRA at

<http://www.bankofengland.co.uk/pr/Documents/publications/ss/2015/ss1915.pdf>.

The right to obtain access to the register of members is governed by the provisions of paragraph 15 of Schedule 2 to the Buildings Societies Act ("the 1986 Act"). This page is not intended to be a definitive interpretation of the 1986 act.

Societies should be aware that the Electronic Communications Order 2003 modifies various provisions of the 1986 Act to enable the use of electronic communications between societies, their members and other persons, subject to their consent. In particular, the Order provides for the inclusion of a member's electronic address in the register of members in addition to a postal address. The information on this page has not been amended to take account of the Order, but the FCA will in general be prepared to use electronic communication if requested by the society or the applicant and some procedures may have to be adapted accordingly.

Applications can be made using the form at Annex 2.

## Register of Members

Each society is under a statutory obligation to maintain a register of its members (although the form in which it is maintained is at the discretion of the society). The register must show each member's name and address and whether that person is a shareholding member or a borrowing member. The register must be kept at the society's principal office or such other place or places as the society's directors think fit.

Companies are under a statutory obligation to make their share registers available for inspection by the general public. There is no equivalent obligation on building societies with respect to the registers of their

members. A society is not required to allow access to its register other than in the circumstances provided for in paragraph 15 of Schedule 2 to the 1986 Act. Except to the limited extent that access is permitted under that paragraph, a society's register of members is confidential (and subject to data protection legislation).

There are two principal reasons for the confidentiality of the registers of members of building societies. First, it is to protect the privacy of members, whether individually or generally, so the fact that a person is either a shareholder in or a borrower from a particular society (or both) is not subject to indiscriminate disclosure. Second, it is to protect the commercial interests of societies given that it could be to their competitive disadvantage if the identities of their shareholding and borrowing members, who are their customers, were readily available to competitor organisations (the identity of whose customers is not so available).

However, building societies are mutual associations of members. As such, it is in principle reasonable for members to be able to pursue a direct interest in the business and management of their society and to get in touch with each other on matters of mutual concern.

Within the framework set out in paragraph 15 of Schedule 2 to the 1986 Act, it is the responsibility of the FCA to balance the rights of individual members generally to privacy, and of societies to commercial confidentiality, with the reasonable right of particular individual members to get in touch with each other on matters relating to the affairs of their society. The confidentiality of the information held on the register can be set aside only where the applicant can make out the case within the particular circumstance described in paragraph 15 of Schedule 2. In the opinion of the FCA, access to the register is to be considered as much a privilege as a right.

### **Statutory Framework**

Paragraph 15 of Schedule 2 to the 1986 Act governs when and how access to the register of members of a building society may be obtained. Subject to the exception provided for in paragraph 15(1) of Schedule 2, access may only be granted on a direction by the FCA. Paragraph 15(2) of Schedule 2 provides that a member may, if qualified to do so, make a written application to the FCA to exercise the right to obtain members names and addresses from the register of the society of which he or she is also a member, for the purposes of communicating with those other members of the society on a subject relating to its affairs. The text of paragraph 15 is at Annex 1.

Paragraph 15(1) of Schedule 2 provides for an exception to the requirement to make an application to the FCA. Where the PRA has cancelled a society's permission to accept deposits and the society has not had its permission reinstated, a member of that society has the right to obtain the names and addresses of its members from the register without application to the FCA. In this case, the applicant is not required to have been a member for any specified period but he must be otherwise qualified to obtain access to the register

A member is qualified for the purposes of obtaining access under paragraph 15(1) or (2) of Schedule 2 if, under the rules of the society, he or she may join in a members' requisition for a special meeting or in nominating a person for election as a director. This means that the applicant must be an investing or borrowing member of the society. If the society's rules prescribe a minimum investment or mortgage debt the member must hold shares or have a mortgage debt of at least that amount. The minimum cannot exceed 100 in either case (which figure the Treasury may change by Order). In cases covered by paragraph

15(2) of Schedule 2, the society may also require the applicant to have been a member for such period as may be specified in its rules. In most cases this is two years (the maximum permitted by the 1986 Act).

An application under paragraph 15(2) of Schedule 2 is subject to the payment of a reasonable fee, currently £25, to the FCA. Where an application is made, the FCA may direct the society to give the member access to the register provided the FCA is satisfied that:

(1) the applicant requires access for the purposes of communicating with members of the society on a subject relating to its affairs; and

(2) the applicant has not, since making the application, voluntarily ceased to be a member of the society.

The FCA must also have regard to the interests of the members as a whole and to all the other circumstances. If access is granted it may only be used to obtain the names and addresses of members for the purposes of communicating with them on a subject relating to the society's affairs (see also paragraphs on "a subject relating to a society's affairs").

Before giving a direction, the FCA is required to give particulars of the application to the building society concerned and to give it the opportunity to make representations. If either the applicant or the society so requests, the FCA must give both the opportunity of being heard by it. The FCA must also consult the PRA before making a direction. A direction given by the FCA may be subject to such limitation or conditions as the FCA may think fit.

If the FCA directs that the applicant shall have the right to obtain access to the register, the applicant may apply in writing to the society, describing the subject on which it is proposed to communicate with other members of the society. The society is required to give the applicant all necessary information as to where the register is kept and reasonable facilities (including office accommodation) for inspecting it and taking copies of any names and addresses. The applicant only has the right to take names and addresses from the register. A society may make the information from the register available to an applicant in such a way that only those names and addresses are disclosed.

Information obtained by the applicant from the register of the society concerned and relating to a member of that society may not be disclosed to any other persons without the consent of that member whose name and address has been taken from the register. Nor may it be disclosed for purposes not connected with the purposes given at the time the FCA made its direction. Contravention of these requirements is a criminal offence. Paragraph 6 of Schedule 14 to the 1986 Act provides that any dispute as to the rights of a member under paragraph 15 of Schedule 2 shall be referred to the FCA and treated as a reference to arbitration; and its award shall have the same effect as that of an arbitrator in a reference under paragraph 4(1) of Schedule 14.

### **Making An Application**

- Applications should be made to the FCA in writing in the form at Annex 2. Each application must be accompanied by the prescribed fee, which is currently £25 (cheques should be made payable to the Financial Conduct Authority). This fee is not refundable in any circumstances.
- Should an applicant wish to obtain access to the registers of more than one society (the applicant must, of course, be a qualified member of each of them), there must be a separate application, for each of which a separate fee must be paid.
- The FCA will acknowledge all applications within 5 working days of receipt.

- To assist the FCA in its consideration of an application, and the society in making any representations on it, the application should set out clearly and concisely the issues about which the applicant wishes to communicate with other members and the purposes in doing so. In addition to this statement, the FCA requires at the time of the initial application a draft of the communication that would be sent should the FCA direct the society to give the applicant access to the register.

Without prejudice to its consideration of an application in any particular case, applicants should note the following general guidelines when preparing an application:

- the FCA will expect the member making the application to have read carefully the relevant provisions of the 1986 Act and this note;
- it is important to be specific about the purpose of the application, how it relates to the affairs of the society and why and how access to the register of members is necessary to achieve the applicant's objective;
- an applicant should think carefully about the purpose and content of the proposed communication before making the application so as to minimise the need for substantive changes to it at a later date;
- an application may be supported by such information or documents as the applicant may wish, but these will be considered to form part of the application, will be seen by the society and be open to comment by it;
- where an applicant submits two or more applications (together or in quick succession) it should be made clear as to why access to the register of members of each of the societies is necessary and how the purpose of each application relates to the affairs of that society;
- should an applicant be successful he or she will incur expenditure in taking names and addresses from the register and then producing and mailing the communication and the applicant should take this into account before submitting an application.

### **Considering an application**

The FCA will consider, first, whether the application contains all the relevant information. It may ask the applicant to provide further information or clarify what has already been given. If, in the opinion of the FCA, the application is defamatory, frivolous or vexatious the FCA may decide that it would be inappropriate to consider it further. The applicant will be informed of such decision as soon as practicable. In such cases the FCA may give the applicant an opportunity (normally only once) to revise the application to take the FCA's opinion into account. If a revised application is received by the FCA within 10 working days of the FCA's notice that the previous application was unacceptable (or such other period as the FCA may, in the circumstances, consider reasonable), a further fee will not be payable.

If the FCA is satisfied that the application provides all the relevant information and is, on the basis of that information, a valid application for the purposes of paragraph 15 of Schedule 2, the FCA will send the application, together with any supporting information or documents provided by the applicant, to the society. The society will be asked to confirm that the applicant was qualified to make the application at the time it was made and, if so, invited to make written representations on it to the FCA. The FCA will also ask the society whether it wishes to make oral representations at a hearing held by the FCA. The FCA will normally expect a society to submit its representations, or to confirm that none are to be made, within 15 working days of receipt of the copy of the application.

Once the FCA has received the society's written representations, together with any supporting information or documents, a copy will be sent to the applicant with an invitation to make written comments on them to the FCA. The FCA will also ask whether the applicant wishes to make oral representations, irrespective of whether the society has indicated that it would wish to do so. The FCA will normally expect an applicant to provide written comments or to confirm that none are to be made within 15 working days of receipt of the invitation.

Once the FCA has received the applicants written comments, a copy of them will be sent to the society. This will normally be for information only. However, in any case where, in the opinion of the FCA, the applicant has introduced new matters which can properly be dealt with as part of the existing application, the society will be given the opportunity to make further representations. If the applicant has introduced new matters which, in the opinion of the FCA, cannot properly be dealt with as part of the existing application, the FCA may ask the applicant to make a new application or it may disregard the new matters for the purposes of the application under consideration. In the latter case the FCA will inform the applicant accordingly. The FCA may seek further information or other documents from either the applicant or the society at any time.

Paragraph 15(2) of Schedule 2 sets out the matters to which the FCA should have regard in considering an application:

- (1) the purpose of the proposed communication, which must be on a subject relating to the society's affairs;
- (2) the interests of the members as a whole;
- (3) all the other circumstances.

Paragraph 15(3) of Schedule 2 provides that the FCA may give a direction subject to such limitations or conditions as the FCA may think fit.

The FCA will consider each application on its merits. The next three sections give further details about how the FCA will consider each of the factors to which it may have regard.

### **A subject relating to the society's affairs**

The 1986 Act does not define affairs. As a general proposition, the FCA considers that affairs will primarily relate to matters connected with the society's finances, its business activities and the manner in which it carries on those activities, and not just to the applicant's personal affairs. Given the principal reasons for the confidentiality of the registers of members of building societies the matters about which the member wishes to communicate with other members, will, in the opinion of the FCA, normally need to be of a substantial nature and must relate to the particular society concerned. The FCA will expect the applicant to demonstrate not only why he or she is personally concerned about, or affected by, these matters but also why it is necessary that this concern is communicated direct to other members.

Paragraph 15 of Schedule 2 requires each application to be considered separately by the FCA so that it cannot consider applications with the same, or similar purpose, or related to the same, or similar issue, as if they were a class application. So, for example, an application from a member wishing to obtain the required support of other members to stand for election to the board of directors of a society will be considered individually and on its merits, notwithstanding any previous decision the FCA may have taken on an application with the same, or similar, purpose.

The FCA will wish to be satisfied that the wording of the communication is consistent with the stated purpose of the application. It may invite the society to comment on the communication but the society cannot itself stipulate what its terms should be.

### **The interests of the members as a whole**

The FCA will balance the wider interests of the membership as a whole with those of any one individual member or group of members. The FCA will require the applicant to demonstrate that the communication raises matters which are likely to be of interest to the society's members generally or at least a substantial section of them. The FCA will take into consideration any evidence of support from other members of the society, should the applicant claim that this has already been given.

Whilst the right to make an application is open to all qualified members of the society, the FCA is of the opinion that, as a general proposition, access to the register is not an appropriate vehicle for the pursuit of a private grievance between a member and the society or the pursuit of a more general campaign affecting the building societies sector as a whole. The Financial Services and Markets Act 2000 provides for a reference to the Financial Ombudsman Service for the investigation of a customer complaint, and the 1986 Act provides for a reference to the High Court (in Scotland, the Court of Session) for the resolution of a membership dispute.

The 1986 Act does not require that a person who is given access to the register must write to all the members. To do so would mean that the right of access was of little practical value. In the opinion of the FCA, it is acceptable for the applicant to write, for example, to a random selection of members or to those living in a particular geographical area. However, the FCA may require the communication to indicate whether or not it has been sent to all the members or only a proportion of them (and, if so, on what basis that proportion was selected).

### **All the other circumstances**

The circumstances that may be appropriate for the FCA to take into account can only be identified in the particular case at the particular time. As a general proposition, the FCA will take into account any relevant information in respect of the applicant's relationship with the society. This could include, for example, previous applications for access to the register. The FCA will also take into account whether the applicant has raised the issue about which he or she is concerned at the society's annual general meeting or whether he or she would be able to do so at a future meeting. The FCA will at the same time take into account any evidence that the society has attempted to frustrate the member's legitimate right to speak on the issue at the annual general meeting or seems likely to do so on a future occasion.

The FCA will also take into account the likely effect on building societies generally should the applicant be given access to the register of members of a particular society and write to the other members as proposed. It will consider whether, should it direct that an applicant be given access to the register of one society, this could have any adverse impact on other societies, for example, a possible risk to confidence. The FCA will also expect the applicant to explain why it is not possible to obtain support in some other way and so why it is necessary to have the privilege of accessing the register of members. The FCA will expect an applicant to show an awareness of these wider considerations and will wish to be assured that they will be appropriately reflected in both the tone and the content of the communication.

An applicant will be expected to disclose to the FCA whether he or she is acting in a purely personal capacity or on behalf of, or in concert with, any other person or institution, or whether he or she has an

interest in the society beyond the fact of being a member of it. Where the applicant has not made such a disclosure, but the FCA has reason to believe that he or she may be acting for or in concert with another party, the FCA will make enquiries to establish the facts and will invite the applicant to comment on its findings. Each application to inspect the register of members is considered on its merits. Where an application is made by a member whom the FCA considers to be in effect acting on behalf of a third party commercial institution, it will in particular have regard to:

- (1) the nature of the members own interest in the application and the third party Institution's objectives;
- (2) the interest of members as a whole in preserving privacy and the society's right to commercial confidentiality in its membership list;
- (3) any interaction between the application and the detailed and mandatory procedures under the 1986 Act governing mergers of building societies or as the case may be transfers of business to commercial companies; and
- (4) other means open to the member and the third party institution to communicate with members on the relevant subject.

The interests of the members as a whole should not be confused with the personal interests of one or more individual members.

#### **Such limitations or conditions as the FCA may think fit**

The 1986 Act imposes a specific restriction on any person who has taken information from the register of members. That is, the information may not be further disclosed (by that person or anyone to whom the information has been disclosed in accordance with the direction given by the FCA) except with the consent of the member to which it relates or for the purposes for which the 1986 Act provides. This is an essential safeguard against the abuse of the privilege of being given access to the register of members and contravention of the restriction is a criminal offence.

The FCA will consider what limitations or conditions it should properly attach to a direction in each particular case. However, and without prejudice to the exercise of its discretion, the FCA will normally consider limitations or conditions in the following areas:

- (1) whether the information taken from the register may be further disclosed and, if so, those to whom it may be disclosed. In particular, if the requestor is acting on behalf of a third party commercial institution, the FCA is likely to impose such conditions as may be necessary to ensure that the third party institution does not directly or indirectly gain access to the information in the register or use the proposed communication by the applicant with other members to damage the society;
- (2) that the communication must be in writing and addressed separately to each of the members to whom it is sent;
- (3) that the material terms of the communication sent must be those seen by the FCA at the time it reached its decision on the application;
- (4) that the communication is accurate, is not offensive, is not misleading (including any inference that the communication is being made by, or on behalf of, the society), is not likely to bring about a loss of confidence in the society (or in societies generally) or otherwise harm its current or future business;

(5) that the communication must be sent within a specified time;

(6) that the applicant is given a specified period during which the relevant information is to be made available.

### **Oral Hearings**

Should either the society or the applicant ask for an opportunity of being heard by the FCA, then it will invite both parties to attend a hearing. If neither party so requests, the FCA will normally decide the application on the basis of the written evidence available to it, including the application, the society's comments and the applicants written comments together with the results of any enquiries the FCA itself may have made. If there is an oral hearing this will normally be taken by one or more persons authorised by the FCA to act on its behalf.

The FCA will normally give the applicant and the society not less than 10 working days formal notice that there will be a hearing, including the place and time at which it will be held. The hearing will normally be held in public. However, if either the applicant or the society requests that the hearing be held in private, the person(s) taking the hearing will listen to arguments from both parties before deciding whether to admit the public (which may include representatives of the media). Whilst the proceedings will be comparatively informal, the applicant and the society may, if they wish, be legally represented. In any such case, the FCA must be notified at least 5 working days in advance of the hearing so that it may inform the other party. The applicant and the society may also be assisted by such other persons as the FCA considers reasonable in the circumstances.

The person(s) taking the hearing will introduce the proceedings and deal with any preliminary matters. The applicant and the society will then each be invited to present their cases, in that order. Each will have the opportunity to comment on the case presented by the other. The person(s) taking the hearing may ask such questions as they consider necessary, particularly to establish or elucidate matters of fact, but will not respond to questions from either of the parties. This procedure may be varied according to the circumstances of the particular case.

### **Deciding an Application**

The person taking the hearing will not normally announce a decision at the hearing or give any indication as to the FCA's likely decision. The FCA's decision with reasons will always be given in writing. The FCA will normally expect to issue its decision within 15 working days of a hearing. A copy will be sent to the applicant and to the society.

The FCA will make its decision public. It would also normally expect to make copies of its written decision with reasons available to those interested to see it. It may decide not to do so, however, where it considers that publication could be prejudicial to the interests of shareholders or depositors in or with the society. The FCA will, if either applicant or society objects to the publication of its written decision, give both parties the opportunity to make representations to it.



## **Annex 1: Extract from the 1986 Act**

### **Schedule 2, paragraph 15**

Right of members to obtain particulars from the register

15. (1) At any time when a building society

(a) has had its permission under Part 4A of the Financial Services and Markets Act 2000 to accept deposits cancelled;

and

(b) has not subsequently been given such permission,

a member of the society shall, subject to sub-paragraph (1A) below, have the right to obtain, from the register kept under paragraph 13 above, the names and addresses of members of the society, for the purpose of communicating with them on a subject relating to the affairs of the society.

(1A) Sub-paragraph (1) above shall not apply unless the member in question

(a) is qualified under the rules of the society to join in a members requisition for a special meeting, or to join in nominating a person for election as a director; or

(b) would be so qualified if any requirements as to length of time a person must have been a shareholding or borrowing member were omitted.

(2) If, at any time not falling within sub-paragraph (1) above, a member of a building society who is qualified under the rules of the society to join in a members requisition for a special meeting, or to join in nominating a person for election as a director, makes a written application to the FCA for the right to obtain names and addresses from the register, the FCA if satisfied that the applicant

(i) requires that right for the purpose of communicating with members of the society on a subject relating to its affairs; and

(ii) has not, since making the application, voluntarily ceased to be a member of the society; and having regard to the interests of the members as a whole and to all the other circumstances; may direct that the applicant shall have the right to obtain from the register the names and addresses of the members for the purpose of communicating with them on that subject.

(2A) The FCA may charge a reasonable fee for considering an application under sub-paragraph (2) above.

(3) Any direction under sub-paragraph (2) above may be given subject to such limitations or conditions as the FCA may think fit.

(3A) The FCA must consult the PRA before giving a direction under sub-paragraph (2)

(4) Before giving a direction under sub-paragraph (2) above, the FCA shall give particulars of the application to the building society and shall afford the society an opportunity of making representations with respect to the application; and the FCA shall, if the applicant or the society so requests, afford to the applicant and to the society an opportunity of being heard by it.

(5) A member entitled under this paragraph to obtain the names of members of a building society may apply in writing to the society, describing in the application the subject on which he proposes to communicate with other members of the society; and the society shall give him all necessary information as to the place or places where the register, or part of it, is kept, and reasonable facilities for inspecting the register and taking a copy of any names and addresses in the register.

(6) A building society shall not be obliged to disclose to a member making an application under this paragraph any particulars contained in the register other than the names of the members and their addresses, and may construct the register in such a way that it is possible to disclose the names and addresses to inspection without disclosing any such other particulars.

(7) No information obtained under sub-paragraph (1) or (2) above or this sub-paragraph and relating to a member of the society may be disclosed except with

(a) the consent of that member;

(b) or in the case of information obtained under sub-paragraph (1) or (2) above, for purposes connected with the purpose mentioned in that paragraph.

(8) Any person who discloses information in contravention of sub-paragraph (7) above shall be liable

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both; and

(b) on summary conviction, to a fine not exceeding the statutory maximum

## **Annex 2**

**APPLICATION FOR THE RIGHT TO OBTAIN ACCESS  
TO THE REGISTER OF MEMBERS OF A BUILDING SOCIETY**

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*This form is to be completed by a member of a building society who wishes to be given access to the register of members of the building society of which he or she is a member in accordance with paragraph 15 of Schedule 2 to the Building Societies Act 1986 (as amended by and under the Financial Services and Markets Act 2000) and who is qualified under that paragraph to make such an application. Before completing this form you are advised to read the guidance published by the Financial Conduct Authority. Copies of this form may be downloaded from the FSA's Handbook webpage on Regulatory Guides <http://fsahandbook.info/FSA/html/handbook/D44>.*

*On completion this form should be sent to the Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.*

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**1. Name of the society of which you are a qualified member to whose register of members you wish to be given access:**

**2. Name and address of applicant:**

**Name**

**Address**

**Telephone**

**3. Share account details**

**Account name (s)**

**Account number (s)**

**4. Mortgage account details**

**Account name (s)**

**Account number (s)**

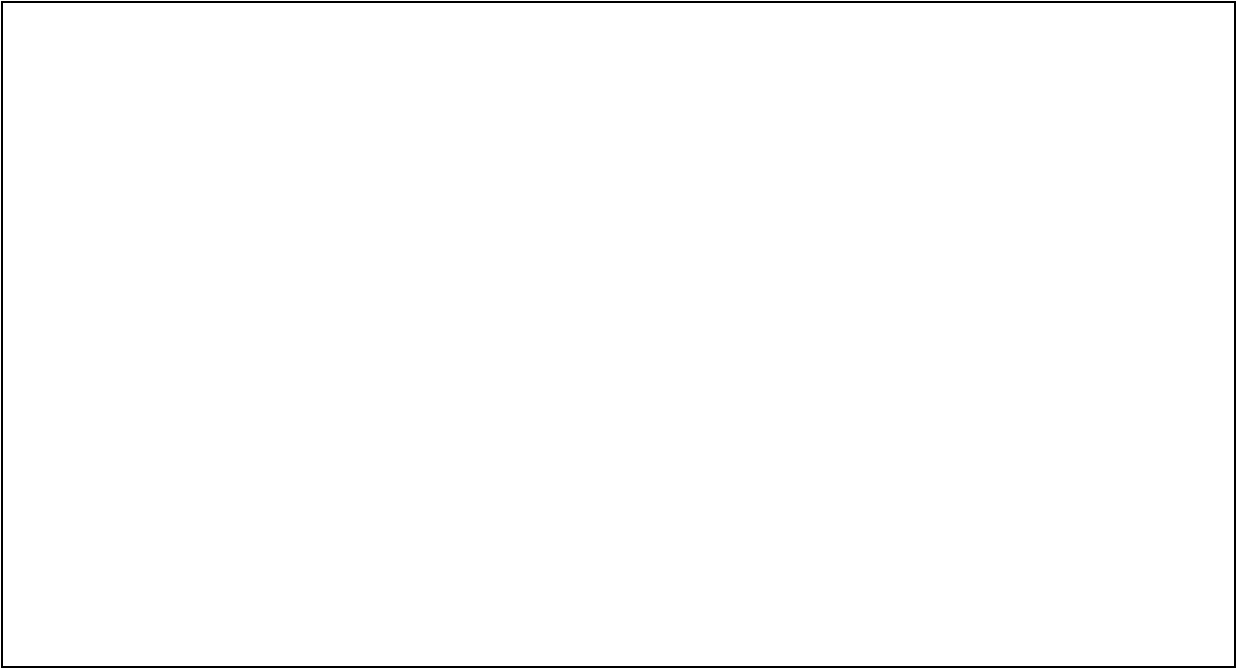
**NOTE**

If the name and/or the address in which you hold either or both of the above accounts are different from the name and address given for the purposes of this application, please specify that in which it/they are held.


**Name**

**Address**

5. Please specify the subject on which you wish to communicate with other members of the society and the points you would wish to make in your communication. Please also enclose a draft of your proposed communication.



6. If there is any other information or documents, in addition to your draft communication, you would wish to form part of your application, please specify.



**DECLARATION**

7. I declare that I am qualified under the rules of the society named above to make this application.

8. I understand that this application form, and any information or documents enclosed with it, may be sent to the society, which may make representations about it to the FCA.

9. I have read and understand the statutory restrictions which will restrict me from disclosing any information I take from the register if I am given access to it.

10. I enclose payment of £25 in respect of this application. I understand that this fee is not refundable.

**Signed** .....

**Date** .....