



Response to the FCA's Consultation CP21/14 on Preventing Claims Management Phoenixing

Submission by the Transparency Task Force, June 21st 2021

About the Transparency Task Force

The Transparency Task Force is a Certified Social Enterprise, meaning that we exist to make an impact, not profit.

The mission of the Transparency Task Force is to promote ongoing reform of the financial sector, so that it serves society better. Our vision is to build a large, influential and highly respected international institution that helps to ensure consumers are treated fairly by the financial sector.

The primary beneficiaries of our work will be consumers; but the sector itself will also benefit through improved market conduct and increased trust in the services it provides.

Our objective is to carry out a broad range of activities that help to drive positive, progressive and purposeful finance reform, such as:

- Building a collaborative, campaigning community; the larger it is the more influence it can have in driving the change that is needed
- Raising awareness of issues; so that society better understands the problems that exist in the financial sector and how they can be dealt with
- Engaging with people who can make change happen; because through such dialogue we can influence thinking, policy making and market conduct

Much of our focus is on rebuilding trustworthiness and confidence in financial services. To make this possible we are busy developing a framework for finance reform which we describe as a

“whole system solution for a whole-system problem” as described in [our recently published book](#)

Our response to you has been produced by a highly collaborative group of TTF volunteers, our “Response Squad,” working together to build consensus, whilst always remaining true to our “North Star” question: “What is best for the consumer?”

For further information about the Transparency Task Force see:
<http://www.transparencytaskforce.org>

Introduction

There is an urgent need to reform the regulation of the financial services sector because far too many people are exposed to the risk of economic crime, especially as only about 1% of police budget is earmarked towards fighting fraud, even though it is now the most common of all types of crime.

Most people lack the knowledge, experience and expertise to make well-informed, balanced decisions about their finances and as such they are vulnerable to being manipulated by unethical “professionals” and outright criminals. We believe they ought to be properly protected by a robust regulatory framework.

However, there is a mountain of evidence that we do not yet have a robust regulatory framework - the reports by Dame Gloster on the FCA’s handling of LC&F and Raj Parker on the FCA’s handling of Connaught alone substantiate our point that there is ample scope for the FCA to up its game.

It is therefore vital that the entire regulatory framework is strengthened and that includes the regulation of the Claims Management sector. We believe that the Claims Management sector can perform an important role in helping victims of economic crime to get justice and compensation. However, we also believe that the sector needs to be properly regulated, otherwise the risk that consumers will experience poor outcomes will continue.

In broad terms, we feel that the consultation sets out a range of good ideas that we support; but we ask the FCA to go further.

Response to Questions:

Question 1

Do you agree with the harms that we have said arise from claims management phoenixing?

Yes. There have been many instances where CMCs have obtained client records from the directors of regulated firms pre insolvency and from Insolvency Practitioners post insolvency when selling client data to regulated firms who then sell data to CMCs or start a new CMC themselves.

What is meant by the terms “harms” is questionable. Most victims of bad financial advice don’t complain or receive compensation. Any help those people can get is better than no help. CMCs provide a very worthwhile service but have been vilified by the banking industry and politicians particularly to stop claims. The financial services industry morphing into CMCs has been very poorly regulated and supervised but will always find ways of overcoming barriers to obtaining new clients. The one body that the FCA should be asking is the CMCs directly as the bulk of them don’t want it to happen as well.

Question 2

Do you agree that the proposals will not materially impact any of the groups with protected characteristics under the Equality Act 2010?

No. If one considers that only one in four complainants go to the FSCS independently, there is a strong case to ensure victims are helped. The complexity and cleverness of the financial services industry to perpetrate dishonest assistance will never be overcome. It could be helped if such action was criminalised. It is just too simple for records to go to another regulated company and the same bad advice repeated. Part of the problem is when the FCA takes the view that “the company is no longer regulated by us.” There is a major gap between a company being regulated and what is done by both insolvency practitioners and Official Receivers. Neither falls within the remit of the FCA. The main insolvency regulators and Insolvency Service are certainly not interested.

Question 3

Do you agree that CMCs should be prohibited from carrying on FCA-regulated claims management activity in the circumstances we have proposed?

Yes. We believe there is rarely any proper investigation of the relationship between directors of insolvency regulated companies and parties that obtain client records. In particular, there is very limited understanding by insolvency practitioners of this behaviour to stop and/or report it to the FCA.

More must be done to help clients of insolvency in relation to FCA regulated firms, especially by insolvency practitioners. When limited funds are available to IPs in CVLs, there is no incentive to investigate what happened to client records. In many instances, IPs have left them with directors because they don't have any intrinsic value for creditors. Many directors simply take client records to sell to CMCs and there has been no agency responsible for this.

Question 4

Do you agree that the prohibition should apply to the firms we have described here?

Yes. However, the understanding and supervision of these practices by the FCA has been poor thus far.

Question 5

Do you agree that the prohibition should apply to FSCS claims and potential FSCS claims in the way we have described here?

No, we believe there is scope to improve the proposal. Mis-selling pension investments is often carried out by consortiums of people and companies, regulated and non-regulated. Identifying which one can be claimed against can be extremely difficult for retail clients. Many clients are asked to and agree to accept that they are high net-worth individuals and sophisticated investors, which they take that they are precluded from making a claim, despite this being incorrect, as their ignorance of regulations and case law is extremely limited or non-existent.

More needs to be considered otherwise claims will be made against pension ceding providers and pension administration companies, which won't go to the FSCS.

Q6: Do you agree that the prohibition on lead generation should apply to pre-existing and new agreements, and the prohibition on advice, investigation or representation should apply to new agreements only?

Yes. It should apply to pre-existing agreements. However, to do this an approved and regulated party must be appointed to fill the gap.

Q7: Do you agree that the proposals should take effect 1 month from the date the rules are made?

Yes.

Q8: Do you agree that CMCs should be required to notify us as described in this chapter?

Yes.

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