



Response to the FCA's Consultation Paper 21/28: New Cancellation and Variation Power - Changes to the Handbook and Enforcement Guide

Submission by the Transparency Task Force, October 28th, 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>

Our Response

Rather than engage with each specific question in the consultation document, many of which relate to the details of implementation, we have decided to provide a high level response summarising our views on the principal issues raised.

The Transparency Task Force supports the overall principle that firms should not be on the FCA’s Register unless they are actively trading and are using the permissions they have been granted.

There are three reasons for this:

- An authorised firm can conduct unauthorised business while benefiting from the ‘halo effect’ of FCA authorisation, but free from the theoretical risk of consequences from being supervised by the FCA, a state that may be triggered or become more onerous as a result of conducting specific regulated activities;
- The principals of the authorised firm, or connected or unconnected parties, can ‘clone’ the authorised firm and improperly conduct regulated or unregulated business through it, again benefiting from the ‘halo effect’ but with even less risk of detection or enforcement by the FCA;
- Inactive authorised firms provide a quick and cost-effective means by which the principals of firms associated with misconduct, or that become insolvent, can ‘phoenix’ their activities into a clean, already-authorized business, leaving behind the previous firm’s liabilities for clients, suppliers and the Financial Services Compensation Scheme

We also believe that firms should not hold permissions they do not use. The risk is that they may leverage the existence of such permissions to conduct activities on, or just beyond, the

regulatory perimeter, relying on the fact that consumers who check the Register may incorrectly conclude that they are operating within that boundary, and that FCA supervisors may not check their websites, online reviews, computer records or interrogate other evidence to establish the true scope of operations.

Obviously this risk could be mitigated by more proactive, inquisitive and capable supervision; but given the concerns we and many others hold about that function of the Financial Conduct Authority, we feel that it is safest to push for a 'use it or lose it' regime - for specific permissions, and not just for being on the Register.

In question 5, the FCA posits that consumers might lose the right to compensation from the Financial Services Compensation Scheme where an act or omission occurs after a variation or cancellation of permissions or annulment of authorisation. We believe that this may be acceptable where the customer journey takes place wholly after the regulatory decision has been fully implemented, is reflected on the register and the FCA has established beyond all reasonable doubt that the firm is no longer holding itself out to have permissions or authorisation that it does not in fact hold and has contacted all clients and prospects to notify them of its changed status.

Conversely, we believe that where a customer journey begins when the firm is on the register or holds the necessary permissions, he or she is entitled to believe that the firm's status remains unchanged until notified to the contrary; therefore, if he or she contracts with the firm after its change of status, having not been notified of that change, the firm is still benefiting from the 'halo effect', thus COMP should still apply.

Please don't hesitate to get in touch if you have any queries.

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