



## Press Release from the Transparency Task Force

### Is the Financial Conduct Authority breaking the Law?

Andy Agathangelou, Founder of the Transparency Task Force, a Certified Social Enterprise, has issued an Open Letter today to Charles Randell, Chair of the Financial Conduct Authority, [\[which can be accessed here\]](#) setting out his concerns that the Financial Conduct Authority may be breaking the law.

Agathangelou comments:

*"I believe the Financial Services Act 2021 makes it clear that the Financial Conduct Authority must carry out a consultation on the introduction a legally-enforceable Duty of Care; and that its [current consultation on the introduction of a Consumer Duty](#) fails to do that.*

*If I'm right, the FCA is in breach of a very serious and very important obligation that Parliament has placed upon it; an obligation designed to lead the way to the introduction of significantly strengthened consumer protections.*

*The situation leads to many important questions that the public deserve answers to, especially the many thousands of people in the UK that have suffered life-changing financial losses due to malpractice, malfeasance, misconduct and mis-selling by the financial industry.*

Questions such as:

- *Why does the FCA seem so reluctant to do all it can to protect consumers from harm through the introduction of a Duty of Care, even though [92% of consumers want a Duty of Care, according to research carried out by the FCA's own Consumer Panel?](#)*
- *Is it true that industry lobbying prevented the FCA moving forward with reforms following their [2018 Duty of Care Discussion Paper?](#) – and if so, is there reason to be concerned that the FCA may have a [regulatory capture](#) problem?*

- *Are the Parliamentarians that won the vote by [296 to 255](#) to introduce a Duty of Care clause into the Financial Services Act 2021 (following an [excellent recent debate](#)) now being short-changed by the FCA?*
- *Is the FCA actually breaking the law in failing to carry out a consultation on Duty of Care? – and if so, is that through error or deliberate intent?*
- *Is there any reason to believe that the FCA may have breached one or more of the [Seven Principles of Public Life](#) in relation to this matter; and if so, who is responsible?”*

Iain Mitchell QC, who’s been helping TTF to develop its policy position on this important matter, shares his thoughts:

*“It was the clear intention of Parliament that the FCA should consult on whether there should be a duty of care imposed on regulated persons. A duty of care means a legally enforceable obligation upon, in this case, regulated persons towards those who are in their reasonable contemplation as being likely to be harmed as a result of their acts and omissions. It is available to any member of the public who is harmed, and does not depend on there being a contract between the parties.*

*In creating a statutory duty, there are important questions to be considered, such as to what persons such a duty should extend and to what standard the duty should be performed. What the FCA does in its paper is to focus on standards of care, whilst avoiding explaining what a legal duty would entail and asking for comments on that. Instead, it suggests a so-called “consumer duty” which falls far short of the duty concerning which it was required to consult, and then, to compound the problem, asks whether the “consumer duty” can be labelled a duty of care. It’s not what something is labelled that matters. What matters is what it is. The Consultation seems not to address that underlying question.”*

Baron Sikka is also concerned about what is happening:

*“The FCA’s consultation process is flawed and seems to dilute the required statutory duty of care by authorised firms to consumers. The Government must intervene immediately to ensure that the FCA properly carries out its statutory obligations and its priority must be to protect consumers rather than continuing appeasement of the industry.”*

Paul Bates, of Bates Barristers which operates in the UK and Canada, makes a sublimely succinct observation:

*“What is the point of a duty of care if it is not enforceable by a right of action for damages?”*

Mark Bishop, Leader of the Connaught Action Group, which is fighting for justice following the [FCA’s catastrophic failure to regulate Connaught Income Series 1 effectively](#), which resulted in life-changing financial losses for many investors, is equally concerned:

*“A duty of care would empower consumers to sue authorised firms and individuals who cause them harm, bypassing what many consider a complacent and even captured regulator. This is not the only recent instance of the FCA trying to deprive consumers of valuable rights: we’re still awaiting the twice-delayed results of the FCA’s attempt, last year, to [further frustrate](#) their ability to use the regulators’ Complaints Scheme to obtain redress from the FCA where it has failed to perform its statutory duties. It is even now using the defects in that scheme to attempt to deny compensation to [London Capital and Finance investors](#), while in the Connaught case it is [falsely claiming victims are not out of pocket](#).”*

*Together, these events point to the existence of an institutional culture at the FCA that is neglectful and even contemptuous of the consumers the regulator should be protecting. There needs to be meaningful reform that places consumer interests, not producer ones, front and centre.”*

Baroness Bryan of Partick feels similarly:

*“The FCA is in danger of protecting the financial services industry rather than policing it. Recent history has demonstrated once again that it is the consumer who suffers, through no fault of their own, due to the lack of effective oversight. The FCA proposal suggests that all that is needed is a change in culture. We know from other industries that change does not come without a legally enforceable duty of care.”*

...as does Lord Stunell:

*“Many of my Parliamentary colleagues will share my concern about the questions raised by the TTF, and will be watching carefully how the FCA responds. We will want to be satisfied they fully intend to implement the duty of care regime without delay.”*

Agathangelou concludes:

*“I hope that once this sorry episode is over, we’ll all be able to look back and know we did all we could to drive forward the positive, progressive and purposeful regulatory reforms that the financial industry needs, and the public so desperately deserves. And if we can help the FCA to become fit for purpose in the process, that would be good too.*

*It seems to me the FCA might be making a great big mistake here. Let’s hope they realise that before it’s too late and don’t let institutional pride get in the way of now doing the right thing – to issue a corrected consultation that complies with the will of Parliament.”*

End of press release