FINANCIAL CONDUCT AUTHORITY

Preventing claims management phoenixing by financial services firms

Policy Statement
PS22/6

June 2022

This relates to

Consultation Paper 21/14
which is available on our website at
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1 Summary

1.1 This policy statement (PS) sets out final rules for claims management companies (CMCs) following our consultation in CP21/14. The rules prohibit CMCs from carrying out regulated claims management activity in certain circumstances on claims and potential claims to the Financial Services Compensation Scheme (FSCS), where the CMCs have relevant connections to the claims. The rules also require CMCs to routinely notify us of connections they have to financial services (FS) firms that could be relevant connections for these purposes. In this PS we summarise the feedback we received on CP21/14, our response, and what we have decided to do.

Who this affects

1.2 These new rules affect:

- current and former FS firms who carry on activities that are protected by the FSCS
- current and prospective CMC firms carrying on FCA-regulated claims management activity for claims about financial products and services that are protected by the FSCS

The wider context of this policy statement

Our consultation

1.3 In CP21/14 we consulted on rules to prohibit claims management phoenixing. Claims management phoenixing occurs when an individual connected with a wound-up FS firm reappears in connection with a CMC, seeking to benefit from the former FS firm's poor conduct by carrying on claims management activities against it. We said in CP21/14 that, of the approximate 250 CMCs we regulate with permission to manage FS claims, at least 18 (7%) have known connections to former FS firms which could allow individuals from those firms to benefit from the firms' poor conduct.

1.4 The rules that we are introducing are intended to address a particularly egregious type of phoenixing, they do not replace or make redundant the rigorous gateway checks that are part of our assertive Authorisations work to keep individuals out of the FCA perimeter where they are seeking to evade responsibility for past failures.

How it links to our objectives

1.5 The rules will advance our consumer protection objective, to secure an appropriate degree of protection for consumers by removing the opportunity for FS firms or individuals of FS firms to pursue claims management activity where they have outstanding redress liabilities. Removing the opportunity will mean FS firms are:

- potentially less likely to seek to exit the market to avoid their liabilities
- less likely to provide poor service before exiting
- more likely to deal appropriately with redress liabilities that do arise

1.6 The rules will advance our integrity objective by ensuring the claims management regime is not used by FS firms or individuals of FS firms to benefit from their own misconduct at the expense of consumers and the firms left to pay the FSCS costs. This will enhance confidence in FS firms, CMCs and the redress system.

1.7 The rules are also relevant to our competition objective because they will remove a potential unfair competitive advantage for CMCs with connections to former FS firms.

What we are changing

1.8 The rules we are making are at Appendix 1. The rules mean that:

1. CMCs are prohibited from carrying on any regulated claims management activity in respect of a claim or potential claim to the FSCS if:

a. Any employee or controller of the CMC, or any member of the CMC's governing body, was directly involved in or had responsibility for managing the FS activity that is the subject of the claim or potential claim; and/or
b. A controller or member of the CMC's governing body is related to a person who was directly involved in or had responsibility for managing the FS activity that is the subject of the claim or potential claim; and/or
c. The CMC or a member of its governing body has transferred or agreed to transfer a financial benefit to a person who was directly involved in or had responsibility for managing the FS activity that is the subject of the claim or potential claim.

2. CMCs will be required to notify us of:

- any FS activity that an employee or controller of the CMC, or any member of its governing body, is or was directly involved in or responsible for managing
- any controller or member of the firm's governing body who is related to a person who is or was directly involved in or responsible for managing FS activity

Outcome we are seeking

1.9 By prohibiting CMCs from managing claims they have a relevant connection with, we want to ensure that:

- FS firms pay due regard to the interests of customers, treat customers fairly and are not incentivised to treat them poorly; they conduct their business with due care

and diligence and, when things go wrong, take responsibility and put things right for their customers.
- A CMC does not seek to profit from past misconduct of individuals connected with it.
- Consumers can be confident that FS firms and CMCs consider their interests and are not seeking to profit from misconduct.
- CMCs will tell consumers if they have to stop managing their claim as a result of the rules (for example if a complaint to the Financial Ombudsman Service becomes an FSCS claim because the firm has failed). Consumers understand the options available for them to continue with their claim.
- FS firms can be confident that the FSCS is not used to pay compensation costs that could in some instances have been avoided, and no part of the compensation paid by the FSCS will go to those who caused that loss.
- CMCs can participate fairly in the market without connections to failed FS firms giving some an unfair advantage.

Measuring success

1.10 Our proposals will be successful if claims management phoenixing no longer occurs. We estimate that at least 220 FSCS claims per year involve phoenixing connections between the firms submitting the claims and the former FS firms they are made against. Our proposed rules aim to reduce that number so that within 2 years of the rules coming into force the number of FCA-regulated CMCs submitting claims with which they have a relevant connection is zero. We will monitor the number of cases of claims management phoenixing.

1.11 Our proposals will also be successful if the information enables us to identify connections between CMCs and former FS firms, and we take action in the event that CMCs do carry on claims management activity for such claims.

Summary of feedback and our response

1.12 Respondents to CP21/14 were generally very supportive of the proposals to prevent claims managing phoenixing. We received responses from 26 respondents. We heard from 8 FS firms, 8 FS trade bodies, 3 CMCs and 1 law firm, 3 consumer organisations, 2 government or regulatory bodies, and 1 individual. All respondents agreed with the harms we had identified and some suggested further harms could also occur. Only one respondent disagreed with banning claims management phoenixing. That respondent asked if we could use a less interventionist remedy instead of a prohibition. Several respondents said the ban on claims management phoenixing should go further, and should apply to all FS claims, not merely FSCS claims.

1.13 We have decided to implement the rules as consulted but with an amendment to include relatives of controllers as a relevant connection. We have also made some minor changes to pre-existing contracts and the timing of notifications, and we have added a provision requiring CMCs to notify customers if the rules require them to stop acting for a customer. Chapters 2 and 3 of this PS discuss in more detail the responses we received to the consultation..

1.14 Several respondents included comments about the funding of the FSCS. As set out in 1.8, one of the outcomes we want to see is that FS firms can be confident that the FSCS is not used to pay any compensation costs that could in some instances have been avoided (i.e. by FS firms choosing to remain in business rather than phoenixing into claims management activity). However, the purpose of this paper is not to address the funding of the FSCS which is being considered as part of a wider review of the compensation framework (see our Discussion Paper, DP21/5).

Equality and diversity considerations

1.15 We considered the equality and diversity issues that may arise from the proposals in this Policy Statement. Overall, we did not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010.

1.16 We asked:

> **Q2:** ***Do you agree that the proposals will not materially impact any of the groups with protected characteristics under the Equality Act 2010?***

1.17 Respondents to this question generally agreed that the proposals will not materially impact any of the groups with protected characteristics under the Equality Act 2010. One respondent felt there was a strong case for victims of insolvent firms to be helped and felt more should be done to help the victims of insolvent firms. Our response to this is dealt with in chapter 2.

Our response

Overall, we do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010. We expect the rules to protect customers of FS firms and CMCs, irrespective of protected characteristics.

Next steps

What you need to do next

1.18 The legal instrument accompanying this PS contains final rules and guidance. The rules and guidance will come into force on 7 July 2022.

1.19 If your firm is affected by these changes, you need to ensure you are able to comply by that date.

What we will we do next

1.20 To help firms comply with the first notification requirement we will send a request by email for the required information.

2 Prohibition on managing connected claims

2.1 In this chapter, we summarise the feedback we received on the rules prohibiting CMCs from managing FSCS claims and potential FSCS claims where they have a relevant connection with the claim.

CP proposals

The prohibition

2.2 In CP21/14 we identified the following harms caused by claims management phoenixing:

- Impact on consumers: FS firms are potentially incentivised to act against their customers' interests.
- Impact on markets: Reduced trust in FS firms and CMCs is likely to damage public confidence and participation in markets.
- Impact on fair competition between CMCs: Fair competition between CMCs is undermined.

2.3 We proposed that to address these harms CMCs are prohibited from carrying on any regulated claims management activity for a claim or potential claim to the FSCS if:

a. Any employee or controller of the CMC, or any member of the CMC's governing body, was directly involved in or had responsibility for managing the FS activity that is the subject of the claims or potential claim; and/or
b. A member of the CMC's governing body is related to a person who was directly involved in or had responsibility for managing the FS activity that is the subject of the claim or potential claim; and/or
c. The CMC or a member of its governing body has transferred or agreed to transfer a financial benefit to a person who was directly involved in or had responsibility for managing the FS activity that is the subject of the claim or potential claim.

2.4 We proposed that the prohibition would apply where there is a direct connection, and where there is an indirect connection. For example, where the CMC director's spouse was the financial adviser who gave the advice that is the subject of the claim, or where financial payment is made from a CMC director to a person who gave or was responsible for managing the advice that is subject of a claim.

2.5 To prevent indirect claims management phoenixing we proposed to specify connections which will trigger the prohibition. Those connections are:

- being related in a specified way to a person who was directly involved in or had responsibility for managing the FS activity
- having transferred or agreed to transfer a financial benefit to a person who was directly involved in or had responsibility for managing the FS activity

2.6 We proposed that for the purposes of our proposals a person is 'related' to another person if they:

- are that person's spouse or civil partner
- and that person are in a relationship that has the characteristics of the relationship between spouses or civil partners
- are that person's parent, brother, sister, child, grandparent or grandchild (including step-relations in these categories)

2.7 We considered proposing an alternative, less intrusive option, of allowing CMCs to carry on claims management activity on claims where they have a relevant connection providing they do not take a fee for that activity. However, acting on a claim can give firms indirect benefits and if individuals from former FS firms are able to grow a CMC business on the basis of past poor conduct or service then it can still cause the same harms.

2.8 We asked:

Q1: ***Do you agree with the harms that we have said arise from claims management phoenixing?***

Q3: ***Do you agree that CMCs should be prohibited from carrying on FCA-regulated claims management activity in the circumstances we have proposed?***

Feedback and our response

2.9 All respondents agreed with the harms we identified as arising from claims management phoenixing.

2.10 All but one also agreed that CMCs should be prohibited from carrying on FCA-regulated claims management activity in the circumstances we proposed.

2.11 Some who agreed felt the scope was too narrow and that we should go further. They suggested the prohibition should cover: FSCS claims where any employee has a connection to the firm or the product or service; previous spouses or civil partners; and uncles, aunts, and cousins, including in-laws.

2.12 There were some requests for clarification. One respondent thought we should make it clear that direct involvement in, or responsibility for, the FS activity that is the subject of the claim or potential claim, includes, but is not limited to, the relevant senior management function holders and certified staff at the wound-up firm.

2.13 There was also a suggestion that we should widen the scope to apply where there is a clear conflict between a CMC and the FS activity that is the subject of the claim.

2.14 Some respondents who agreed with our proposals said more must be done to help clients of insolvent FCA regulated firms.

2.15 There were requests for us to stop considering the alternative, less intrusive option of allowing CMCs to carry on claims management activity on claims where they have a relevant connection providing they do not take a fee for that activity. Respondents said it does not go far enough and would not protect consumers.

2.16 The respondent who did not agree with the prohibition said that not all individuals in the CMC sector are looking to make money at the expense of their clients. They said that each application for authorisation must be considered on its own merits and that they were more concerned with CMCs who have already been granted authorisation and felt that these should be re-visited.

2.17 Respondents also asked:

- how the FCA would identify any non-disclosure
- what enforcement action would be taken
- and what notification firms could expect when a CMC has been in breach of the prohibited activity

2.18 One respondent asked if we have considered the impact of the prohibition on customers more widely and how.

Our response

We are implementing the proposals as consulted on and we have also included relatives of controllers as a relevant connection. As significant shareholders, controllers are likely to benefit if the CMC manages claims with which they are connected so extending the prohibition to capture relatives of controllers is consistent with our policy intention.

We are also introducing a rule to set out the steps that should be taken if the rules require a CMC to cease managing a claim, and we have made some minor changes to pre-existing contracts and the timing of notifications. Overall, we feel our rules strike the right balance between capturing the CMCs that are causing the most egregious harm and unfairly preventing CMCs from managing claims where no benefit flows.

We provided an example of a direct connection in our consultation. The example given was a director of a CMC having been the financial adviser who gave the advice that is the subject of the claim. We have considered providing a list of where there might have been direct involvement or responsibility for managing the FS activity. But we think our rules and guidance are sufficiently clear to enable CMCs to decide whether there has been direct involvement or responsibility for managing the FS activity.

By adding other categories of relations or extending the prohibition to cover any employee who has a connection to the firm or FS activity that is subject of the claim, we risk making the prohibition too restrictive. We don't want to prevent CMCs from managing claims they have no material connection to. A rule that relies on connections that cannot easily be evidenced, such as 'all known people', would also be difficult to enforce.

We have considered the impact of the prohibition on customers more widely. If failed FS firms are not able to carry on claims management activity to help their former customers make FSCS claims there is a risk the customers will be unaware that they have an FSCS claim to make. But a greater risk arises from claims management phoenixing

and the incentive there is for FS firms to act against their customers' interest. Before and during winding up, firms have obligations to deal with complaints, and when a firm enters administration the FSCS will work jointly with the insolvency practitioner to identify potential claimants for redress (as said in our joint statement with the Information Commissioner's Office and the FSCS on insolvency practitioners and authorised firms). We would expect the FS firm to help with this process where possible.

We have issued guidance in FG21/4 for insolvency practitioners (IPs) on how to approach regulated firms. It includes expectations on IPs on engaging with the FSCS and sets out how, if a firm's conduct means customers may have a claim for redress against it, we expect the IP to notify all potential customers if they have a possible claim for redress.

We are also working with regulatory partners, including the FSCS, to help clarify and define our respective roles and how best to help consumers understand them and protections available to them.

Scope of the proposed prohibition

2.19 We proposed that the prohibition will affect firms carrying on any FCA-regulated claims management activity for FSCS claims and potential claims. This includes firms carrying on lead generation activity (seeking out, referring or identifying claims and potential claims) as well as firms investigating and advising on claims and representing consumers making claims.

2.20 Under our proposals the prohibition will not apply to claims made to a FS firm or to the Financial Ombudsman Service, for example, even if the activity that is the subject of the claim is, in theory, FSCS eligible.

2.21 For the activity of advice, investigation or representation, we proposed that the prohibition will apply to new agreements only. For lead generation activity, we proposed that the prohibition on claims management phoenixing, if made, will apply to pre-existing arrangements to provide services, as well as new agreements.

2.22 We proposed that the prohibition and notification requirement will take effect 1 month from the date the proposed rules are made.

2.23 We asked:

Q4: ***Do you agree that the prohibition should apply to the firms we have described here?***

Q5: ***Do you agree that the prohibition should apply to FSCS claims and potential FSCS claims in the way we have described here?***

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?***

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

Feedback and our response

2.24 Respondents generally agreed with our proposals. However, some felt that the scope was too narrow. Several felt it should also cover complaints to FS firms and the Financial Ombudsman Service to encourage good conduct throughout the consumer journey and to prevent claims being made in the knowledge the volume will cause the FS firm to fail, leaving claims to go to the FSCS.

2.25 One respondent did not think it was correct to say that 'if the FS firm is dealing with the liability itself then no cost is imposed on the wider industry.' They said that while the firm is still in business it has to deal with the liabilities but the implications can be wider and that the cost of dealing with claims can cause firms to leave the market, reducing competition and choice for consumers.

2.26 Some respondents felt the prohibition should apply to both pre-existing and new arrangements, although some did recognise the disruption that could be caused by CMCs ceasing to manage claims part way through the process. Suggestions to address this included amending the proposals so that CMCs could continue with a case but not derive profit from it or preventing CMCs from charging a fee altogether.

2.27 There was general agreement with the proposed one-month implementation period but one respondent said that in reality a minimum of three months would be more realistic. Some respondents said we should watch out for any increase in claims management phoenixing in the run up to the rules coming into force.

2.28 The point was made that when measures are introduced to prevent poor conduct it often materialises in other areas where rules or oversight are less stringent. Respondents felt the Solicitors Regulation Authority (SRA) should adopt a consistent approach and were keen to understand how the regimes would align.

2.29 We received some comments on the role of appointed representatives but views differed. One thought the prohibition should cover all former appointed representatives, whether the principal remains able to answer claims or not. Another said a principal is unlikely to carry out all its business through one appointed representative and thought it would be disproportionate for the prohibition to cover all appointed representatives of the former principal.

2.30 Some respondents queried whether the scope could be widened beyond individuals who are directly or indirectly connected to FS firms. One said they have observed Section 75 examples where individuals in firms who fail to provide the service/goods agreed potentially benefit financially by passing the claims to CMCs.

2.31 There were some comments about the handling of complaints. One respondent asked if firms could decline a claim where they can show phoenixing is taking place and another questioned whether there would be an incentive for firms to mitigate their liabilities by rejecting complaints or making unfairly low offers.

Our response

We are implementing the proposals as consulted on with the minor exceptions that contracts entered into before the prohibition comes into force will be caught where a claim was added to the contract after the rules came into force, and where the contract existed before the rules come into force but the customer only authorised or instructed the CMC to act after that date.

We are not extending our rules to capture claims that are not covered by the FSCS or where the connection was not involved in or had responsibility for managing a FS activity as that is not where the harm we are addressing has arisen. The rules that we are introducing are intended to address a particularly egregious type of phoenixing, and as explained above, they do not replace or make redundant the rigorous gateway checks that are part of our assertive Authorisations work.

We understand concerns raised in some of the responses to our consultation that a CMC with connections to a live firm could submit a volume of complaints about that live FS firm, which could lead to that firm exiting the market. However, there is a key difference between redress being sought from a firm that is still trading and one that has ceased to exist, as any redress sought from the former is from the FS firm itself, and not from the FSCS.

A former employee of the FS firm could use knowledge of the firm and its customers to bring claims against the firm as a CMC. However, where there is a risk that a firm's employees provide poor service, such as unsuitable advice, it is for the firm to manage that risk. If the FS firm fails to manage the risk, it is its responsibility to provide redress (irrespective of whether the claim for redress is managed by a connected CMC or another CMC or the consumer themselves). Our proposals are not aimed at helping FS firms manage the conduct of their employees or reduce the number of claims brought against firms that cause consumer harm.

Extending the prohibition to the management of claims beyond those made to the FSCS would also significantly increase the regulatory burden of the rules. We are satisfied that applying the ban to FSCS claims and potential claims provides the appropriate degree of protection against the harms identified.

CMCs taking on claims against live firms after our rules come into force will be aware that they will have to stop managing the claim if the firm exits the market, and they have a phoenixing connection. So we do not think there would be an incentive for them to submit more complaints than they would otherwise have made to the firm, to force it out of

business. We have introduced a rule requiring CMCs who have to stop managing a claim because of our rules to notify the customer and explain what options are available for them to continue with their claim.

Individuals in the CMC, who worked as an appointed representative of the firm the claim is about, will be captured by the prohibition. The CMC would be banned from managing any FSCS claim or potential claim if the individual was directly involved in or had responsibility for managing the FS activity the claim is about. We are satisfied that applying the ban to FSCS claims and potential claims provides the appropriate degree of protection against the harms identified. The relationship between an appointed representative and its principal firm gives the principal firm responsibility for the actions of its appointed representative. If the principal firm fails to manage the risk that an appointed representative provides poor service or unsuitable advice, it is the responsibility of the principal firm.

Other suggestions included covering section 75 claims where the CMC is connected to the supplier of goods or services financed on credit. Section 75 of the Consumer Credit Act 1974 provides that under certain circumstances a lender can be jointly and severally liable for any claim against a supplier in respect of a misrepresentation or breach of contract. The basis of section 75 liability arises because of an existing relationship between the supplier and the creditor. We are satisfied that claims against live creditor firms by CMCs connected to suppliers of goods and services financed by the creditor should be excluded from the prohibition. This is because section 75 claims are not FSCS protected claims and when a section 75 liability arises the cost of paying a claim is borne by the live creditor firm rather than the wider industry sector. However, while the rules are not designed to address this potential harm, we may still consider whether individuals who were involved in activity giving rise to section 75 claims and other claims are fit and proper persons to be operating within our regulatory perimeter.

Some felt that the prohibition should be applied to pre-existing claims and that to avoid disruption to consumers we could allow CMCs caught by the ban to continue managing claims and either not charge a fee for the claim or not make a profit from it. There is no certainty that CMCs would continue to manage claims in such circumstances. And preventing firms from charging a fee where the fee has been agreed and where the CMC has already invested resources is different from banning them from managing claims in future. By applying the ban to new contracts, consumers will experience appropriate protection for the long term but with less short-term disruption. We think our position to apply the ban to new contracts only, for the activity of advice, investigation or representation, with the minor exception referred to above, strikes a fair balance. For lead generation activity, the prohibition on claims management phoenixing will apply to pre-existing agreements to provide services as we consider there is little risk that this will cause disruption to consumers.

One respondent asked if a firm could decline a claim if it could show phoenixing was involved. Our rules prohibiting CMCs from phoenixing

do not ban them from dealing with complaints about FS firms that are still trading. Firms dealing with complaints are required to comply with the complaint handling rules in DISP, which include rules on investigating, assessing and resolving complaints. If a firm receives a complaint from a CMC that it believes to be phoenixing it can share the intelligence with us.

We are satisfied that a 1-month implementation period will strike a reasonable balance between allowing firms to prepare and adjust, and mitigating harm caused by phoenixing activity that is already occurring.

We have discussed our rules with the Solicitors Regulation Authority to help minimise consumer harm that may be caused by any differences between regulatory regimes for claims management activity. The SRA's application process requires applicants to provide information about financial services they may deliver. This includes information about current or prior connection with businesses that provide claims management activities.

3 Notification requirement

3.1 In this chapter, we summarise the feedback we received on our proposals to require CMCs to notify us of links to FS activity that could mean the CMC has a relevant connection with a claim.

CP proposals

3.2 We proposed that CMCs will be required to notify us of:

- any FS activity in respect of which an employee or controller of the CMC, or any member of its governing body, is or was directly involved in or responsible for managing
- any member of the firm's governing body who is related to a person who is or was directly involved in or responsible for managing the FS activity.

3.3 We proposed that CMCs will be required to notify us of direct and indirect connections with FS activity that is or could be the subject of a claim.

3.4 We proposed to require CMC firms to attest annually to the accuracy of these notifications and to provide updates to the FCA where applicable.

3.5 We asked:

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

Feedback and our response

3.6 Respondents generally agreed with the proposed notification requirement.

3.7 Some respondents said that CMCs have shown a poor attitude to regulatory obligations in the past and questioned whether our requirements are too reliant on individuals disclosing connections and whether rules could be avoided by using contractors. Others were keen to receive more detail on how far back a firm would have to go; if there is a requirement to notify the FCA in the interim if a new connected individual joins; and when firms will be required to provide the notification.

3.8 Others were interested in the oversight and governance that will be in place to ensure compliance.

Our response

We are implementing the proposals as consulted on.

Firms are required to supply their returns annually at different dates, depending on their accounting reference date. Until the reporting can be incorporated into one online return our supervision department will send a request to CMCs for the required notification. Firms will be required to provide the first notification within 60 business days of the rules coming into force on 7 July 2022 or within 60 days of them being authorised to carry out regulated claims management activity (whichever is the later). Subsequent notifications will be required within 30 business days of firms' accounting reference date, in line with other reporting requirements on CMCs. Firms will be required to report all connections throughout the reporting period, even if individuals have subsequently left the firm.

We are satisfied that the requirement will apply if a person who was directly involved in or responsible for managing the FS activity that is the subject of the claim is employed by a CMC as a contractor. This is because the person is employed by and/or has received financial benefit from the CMC.

When thinking about how far back a CMC should go when providing its notification, we do not want to ask CMCs for information that will be difficult to ascertain and which is not relevant to our supervision and enforcement of the phoenixing ban. We have witnessed an example of a CMC applying for authorisation in 2020 that was connected to a firm that ceased trading, leading to FSCS claims in 2015. We have therefore decided that when providing us with their first notification we will require CMCs to cover the six years before the date of the first notification request. We think this will provide certainty to CMCs on how far back they will be required to go, while still giving us the information necessary to supervise and enforce our rules.

We will conduct checks on the data and use it to cross check against intelligence received from the regulatory family, which includes FSCS and Financial Ombudsman Service, and through our day-to-day regulatory work, about connections between firms. We have already set out how egregious we consider CMC phoenixing to be. Where we identify breaches of the rules, we will take a robust approach to enforcing them.

Annex 1
List of non-confidential respondents

Association of Mortgage Intermediaries (AMI)

ICO

Money Redress Limited

New South Law

PIMFA

Rebecca Goodson

Simply Biz

Annex 2
Abbreviations used in this paper

Abbreviation	Description
CMC	Claims Management Company
FS	Financial Services
FSCS	Financial Services Compensation Scheme
IP	Insolvency Practitioner
SRA	Solicitors Regulation Authority

Appendix 1
Made rules (legal instrument)

CLAIMS MANAGEMENT (RELEVANT CONNECTIONS) INSTRUMENT 2022

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 137A (The FCA's general rules);
(2) section 137T (General supplementary powers); and
(3) section 139A (Power of the FCA to give guidance).

B. The rule-making powers referred to above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 7 July 2022.

Amendments to the Handbook

D. The Claims Management: Conduct of Business sourcebook (CMCOB) is amended in accordance with Annex A to this instrument.

E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

Citation

F. This instrument may be cited as the Claims Management (Relevant Connections) Instrument 2022.

By order of the Board
1 June 2022

Annex A

Amendments to the Claims Management: Conduct of Business sourcebook (CMCOB)

In this Annex, underlining indicates new text.

2 Conduct of business

2.1 General principles

…

Requirements relating to firms with relevant connections to the claim or potential claim

2.1.15 R (1) A *firm* must not carry on the *regulated activity* of *seeking out, referrals and identification of claims or potential claims* in relation to a *claim* or potential *claim* if:

(a) the *firm* has a relevant connection to the *claim* or potential *claim*; and

(b) if valid, the *claim* or potential *claim* would be a *protected claim*.

(2) A *firm* must not carry on the *regulated activity* of *advice, investigation or representation in relation to a financial services or financial product claim* in respect of a *claim*, or potential *claim*, to the *FSCS*, if the *firm* has a relevant connection to that *claim* or potential *claim*.

(3) The prohibition in (2) does not apply to *regulated claims management activity* carried on pursuant to an agreement entered into before 7 July 2022 except where:

(a) the *regulated claims management activity* is carried on in relation to a *claim* or potential *claim* which was added to the agreement after the date above; or

(b) the *customer's* first authorisation or instructions to the *firm* to act in relation to the *claim* or potential *claim* were given after the date above.

2.1.16 G (1) Relevant connection is defined in *CMCOB* 2.1.17R(1) to (5). That definition refers to FSCS-eligible activities. That term is defined in *CMCOB* 2.1.17R(6).

(2) Activities which could give rise to a *protected claim* are the activities referred to in *COMP* 5.2.1R, when carried on by a *participant firm*, or an *appointed representative* of such a *firm*. Those activities include, for example, the *regulated activities* which constitute *designated investment business* (referred to as part of the definition of *protected investment business* in *COMP* 5.5.1R(1)).

2.1.17 R (1) A *firm* has a relevant connection to a *claim* or potential *claim* for the purposes of *CMCOB* 2.1.15R if one of the conditions in (2) to (4) is met.

(2) A *person* who is:

(a) a member of the *firm's governing body*;

(b) a *controller* of the *firm*; or

(c) an *employee* of the *firm*,

was directly involved in, or responsible for the carrying on of, the FSCS-eligible activity giving rise to the *claim* or potential *claim*.

(3) An individual 'A', who is:

(a) a member of the *firm's governing body*; or

(b) a *controller* of the *firm*,

is related to an individual 'B' who was directly involved in, or responsible for the carrying on of, the FSCS-eligible activity giving rise to the claim or potential claim.

(4) The *firm*, or a member of the *firm's governing body*, has provided, or agreed to provide, a financial benefit to a *person* who was directly involved in, or responsible for the carrying on of, the FSCS-eligible activity giving rise to the *claim* or potential *claim*.

(5) A is related to B for the purposes of (3), and *CMCOB* 2.1.21R(5)(b), if:

(a) A is B's spouse or civil partner;

(b) A's relationship to B has the characteristics of the relationship between spouses or civil partners; or

(c) A is B's parent, brother, sister, child, grandparent or grandchild (including step-relations in these categories).

(6) An activity is an FSCS-eligible activity for the purposes of *CMCOB* 2.1.15R to *CMCOB* 2.1.22G if it falls into one of the categories of activity which could give rise to a *protected claim*.

2.1.18 G (1) For the purposes of *CMCOB* 2.1.17R to *CMCOB* 2.1.21R:

(a) a *person* is not directly involved in, or responsible for an activity if the *person* has a purely administrative or support function (e.g. IT support);

(b) a *person* may be responsible for the carrying on of an activity without being approved as an *SMF manager*;

(c) a *person* may be directly involved in or responsible for the carrying on of an activity if they are an *appointed representative* of a *participant firm*;

(d) an independent contractor may be directly involved in or responsible for the carrying on of an activity; and

(e) *firms* are reminded that the *glossary* definition of *employee* includes independent contractors.

(2) For the purposes of *CMCOB* 2.1.17R(4), the financial benefit could be provided while the *firm* carrying on the FSCS-eligible activity is still a going concern.

(3) An activity may be an FSCS-eligible activity regardless of whether it has given rise to a *claim* or potential *claim*.

2.1.19 G (1) The prohibition in *CMCOB* 2.1.15R(2) means that a *firm* cannot carry on the *regulated activity* of *advice, investigation or representation in relation to a financial services or financial product claim* in respect of a *claim*, or potential *claim*, to the *FSCS*, if the *firm* has a relevant connection to that *claim* or potential *claim*.

(2) In some cases, *CMCOB* 2.1.15R(2) will have the effect of requiring a *firm* to stop managing a *claim* where it has already started carrying on *regulated claims management activities* in relation to the *claim* or *potential claim*. For example, this could happen where the *firm* to which an existing *claim* relates becomes insolvent and the *customer's claim* becomes one to the *FSCS* as a result.

2.1.20 R Where a *firm* is required to stop carrying on *regulated claims management activity* in relation to a *claim* or potential *claim* as a result of *CMCOB*

2.1.15R, the *firm* must take the steps in (1) to (5) within 5 *business days* of becoming aware of the circumstances which result in the *firm* being required to stop carrying on *regulated claims management activity* in relation the *claim* or potential *claim*:

(1) notify the *customer* they have ceased managing the *claim* and explain why;

(2) explain to the *customer* what options are available for them to continue with their *claim*;

(3) explain to the *customer* that they may be able to make their *claim* to the *FSCS*;

(4) provide the *customer* with a link to the *FSCS* webpage; and

(5) explain that the *customer* is not required to use the services of a *claims management company* to pursue their *claim* and that it is possible for the *customer* to present the *claim* themselves for free.

2.1.21 R (1) This *rule* applies to a *firm* which carries on, or has *permission* to carry on, the *regulated activity* of:

(a) *seeking out, referrals and identification of claims or potential claims*; or

(b) *advice, investigation or representation in relation to a financial services or financial product claim*.

(2) A *firm* to which this *rule* applies must provide annual notifications to the *FCA*, containing the information set out in (3) to (6), about its connections to FSCS-eligible activities.

(3) The notification must cover any individual who is:

(a) a member of the *firm's governing body*;

(b) a *controller* of the *firm*; or

(c) an *employee* of the *firm*; and

is or was directly involved in, or responsible for the carrying on of, an FSCS-eligible activity.

(4) For an individual described in (3), the notification must contain:

(a) the name of the individual, and individual's role in the *firm* providing the notification;

(b) the name of the *firm* at which the individual is or was directly involved in, or responsible for the carrying on of, an FSCS-eligible activity; and

(c) the individual's role at the *firm* described in (b), and the dates between which the individual performs or performed that role.

(5) The notification must also cover any individual 'A' who:

(a) is a member of the *firm's governing body* or is a *controller* of the *firm*; and

(b) is related to an individual 'B' who is or was directly involved in, or responsible for the carrying on of, an FSCS-eligible activity.

(6) For an individual described in (5), the notification must contain:

(a) A's name and role in relation to the *firm* providing the notification;

(b) B's name, and the relationship between A and B;

(c) the name of the *firm* at which B is or was directly involved in, or responsible for the carrying on of, an FSCS-eligible activity; and

(d) B's role at the *firm* described in (c), and the dates between which B performs or performed that role.

(7) The first notification submitted by a *firm* under *CMCOB* 2.1.21R must:

(a) be submitted within 60 *business days* of the later of:

(i) 7 July 2022; and

(ii) the date on which the *firm* is first granted *permission* to carry on the *regulated activities* specified in (1); and

(b) cover the previous 6 years (including whether any individual described in (3) or (5) was directly involved in, or responsible for the carrying on of, an FSCS-eligible activity within the previous 6 years).

(8) After the first notification is submitted in accordance with (7), all future notifications under *CMCOB* 2.1.21R must be submitted by a *firm,* within 30 *business days* of the *firm's accounting reference date*, in accordance with *SUP* 16.25.

(9) When submitting a notification under *CMCOB* 2.1.21R, *firms* must report all instances of relevant connections which occurred at any point during the reporting period even if those individuals are no longer relevant connections, e.g., because the individual is no longer employed by the *firm* at the time the notification is submitted.

2.1.22 G The requirement to provide a notification under *CMCOB* 2.1.21R applies in relation to an FSCS-eligible activity regardless of whether such activity has led to a *claim* or potential *claim*.

…

Sch 2 Notification and reporting requirements

…

Sch 2.2 G …

Handbook reference	Matter to be notified	Contents of notification	Trigger Event	Time allowed
CMCOB 2.1.21R	*Claims management companies* with connections to individuals involved in an FSCS-eligible activity.	Names of individuals and *firms* concerned, the roles performed by those individuals, and the dates during which such were roles performed.	*FCA* data request	Annual notifications
CMCOB 2.2.7R	…	…	…	…

Annex B

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text.

16 Reporting requirements

…

16 Annex 45AR Annual Claims Management Report form

…

		Name	**Postal address**	**Email address**	**Does supplier use overseas facilities (e.g. a call centre)?**	**Number of leads purchased from supplier over reporting period**	**Average cost per lead purchased from supplier over reporting period**
…							
52	Of the above types of *claim*, which three saw the largest percentage change in number of successful *claims*?						
		Type of *claim*		Percentage change			
	(a)						
	(b)						
	(c)						
Relevant Connections							
	For *firms* with *permission* to carry on: *seeking out, referrals and identification of claims or potential claims*; or *advice, investigation or representation in relation to financial services or financial product claims*						

53	Is the *firm* providing notification of individuals, as per *CMCOB* 2.1.21R?			Yes / No			
54	If the answer to question 53 is yes, please complete the following information:						
	Where *CMCOB* 2.1.21R(3) applies to the individual:						
	name of the individual	individual's role in the *firm* providing the notification	name of the *firm* at which the FSCS-eligible activity was carried on by the individual	individual's role at the *firm* at which the FSCS-eligible activity was carried on	date that role started	date that role ended	
	Where *CMCOB* 2.1.21R(5) applies to the individual:						
	name of individual A	individual A's role in relation to the *firm* providing the notification	name of individual B	relationship between individual A and individual B	name of the *firm* at which the FSCS-eligible activity was carried on by individual B	individual B's role at the *firm* at which the FSCS-eligible activity was carried on	date that role started and date that role ended

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