



## **Preventing claims management phoenixing by financial services firms (CP 21/14)**

### **FLA RESPONSE**

The Finance & Leasing Association (FLA) is the leading trade association for the UK consumer credit, motor finance and asset finance sectors. FLA member companies include banks, the finance subsidiaries of major manufacturers and independent finance firms. They offer credit services to customers from all social groups, via credit and store cards, personal loans, point of sale finance, motor finance, mortgages and a number of other consumer credit products, as well as a wide range of leasing and hire purchase services to businesses of all sizes.

#### **Introduction**

We broadly welcome these proposals and are supportive of measures aimed at preventing individuals from financial service firms being able to benefit from their past financial failures through CMC activities. We are also supportive of FCA's proposal that CMCs must notify them of certain connections they have or had with FS activity and with persons involved in FS activity, in order to prevent the harms documented, including not being able to profit from past misconduct through CMC's.

We agree that it is important for the FCA to be able to identify direct and indirect connections between CMCs and former FS firms. In this sense, we also endorse the proposed notification requirements in Chapter 4.

It is also important that these proposals are consistently applied to SRA regulated CMCs. In this respect we note that FCA "*have also discussed them with the Solicitors Regulation Authority with a view to ensuring that any differences between regulatory regimes for claims management activity do not cause consumer harm* (paragraph 2.30 page 13)". We believe the SRA should adopt a consistent approach in the interests of consistent consumer protection.

In FLA's motor markets, we would like to see these proposals target former directors and employees of dealerships and intermediaries who leave their companies for such CMC activities or do so once they have gone into liquidation.

## Questions

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

We agree with all the harms FCA have identified in relation to CMC phoenixing. Such activity should result in those concerned being disqualified from ever becoming a director of either a Financial Services firm or a CMC. If possible, FCA should also be looking to identify and disqualify such individuals from being employed in CMCs in any shape or form.

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

We agree that these proposals will not be affected by the Equality Act 2010.

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

We agree with the FCA that CMCs should be prohibited from carrying on FCA regulated claims management activity in the circumstances proposed. This includes making sure not just directors but **any** employee within a CMC firm with a past connection to a failed FS business they are trying to represent through the FSCS is banned from taking forward these claims. CMCs with **any** connection to past FS failings should be banned from taking forward these claims. This needs to be made crystal clear in the regulations, in relation to both individuals (both directors and employees) and organisations.

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

We agree with the FCA that this prohibition should also include lead generators, as well as firms investigating and advising on claims and representing consumers making claims. We also agree that it should capture EEA firms or Gibraltar-based firms carrying on FCA regulated claims management activity related to the United Kingdom.

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

We agree with this proposal. However, there is still a potential threat of such claims being made by individuals within CMCs against financial service firms they use to work for and that have not gone into liquidation.

For example, we are aware of a recent Timeshare case against an FLA member. This was a County Court decision but given by a Circuit Judge. The Claimants said that they had been mis sold their timeshare. During the trial however it became apparent that the Claimants had been perfectly happy with their timeshare and taken a number of holidays until they were cold called and subsequently visited by a CMC operated by a former employee of the Timeshare supplier. He appears to have persuaded them that the timeshare had been mis sold and could arrange for a firm of solicitors to “get them out” of the timeshare and obtain compensation for them. For this they paid the CMC £7,000. At trial one of the Claimants agreed that it appeared that she had been “lied to” by the CMC and the Judge commented that the Claimants appeared to have been perfectly happy with their timeshare and had got exactly what they had wanted from it until they had “*poison poured in their ears by the CMC*” (this is a direct quote by the Circuit Judge).

The FCA should keep a watching brief on such bad practice as well as phoenixing.

**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**

We think the prohibition should apply to both pre-existing and new agreements in all scenarios. It is unacceptable that these harmful poor practices should continue just because they have already started.

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

We agree that 1 month should be long enough for implementation of rules that are aimed at targeting unethical and poor business practices that should not be taking place in the first place.

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

We agree that CMCs should be required to notify the FCA of **any** employee connection to former failed FS firms. We agree this should be broad and cover not just CMC directors but also all their employees and those with relatives connected to such firms.

**FLA**  
**22 June 2021**