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2 February 2026

By email: [cp25-36@fca.org.uk](mailto:cp25-36@fca.org.uk)

Dear Sir/Madam,

**Financial Services Consumer Panel response to FCA CP25/36  
Client categorisation and conflicts of interest**

The Financial Services Consumer Panel (the Panel) welcomes the opportunity to respond to the FCA's consultation paper (the CP) titled Client Categorisation and Conflicts of Interest. We are an independent panel that represents the interests of consumers of financial services including both individuals and small businesses. Our focus is on the outcomes and impacts to these stakeholders.

We appreciate the FCA's efforts to enhance consumer protection relating to client categorisation as well as efforts to simplify the conflicts of interest rules. We address each topic in turn.

**Client categorisation**

The Panel has advocated for the elimination of simple self-certification of elective professional clients for some time and is pleased to see that the new proposals in the CP now call for a formal assessment by firms. We very much agree with the FCA proposals to ensure that firms engage in a process that ensures that: (1) clients are assessed to determine that they have the capability and expertise to make appropriate investment decisions and (2) clients are fully informed of the protections they will lose by opting to be treated as an elective professional client. We further appreciate that firms must have the right governance in place and that the determinations must be well documented.

We do, however, have some concerns that we would particularly like the FCA to note and / or address:

- As the FCA described in 3.104, informed consent cannot be based on a tick-box form. Firms must provide a description of each consumer protection that will be lost. Clients must demonstrate to the firm that they understand the implications of this and that they will not be unduly harmed by the loss of protection(s).
- We do not agree that £10 million in wealth is necessarily adequate to protect all consumers; for some, a qualitative assessment should still apply. We urge the FCA to clearly indicate to firms that an exception should apply to the £10 million threshold in the case of a potential investor whose source of wealth might give rise to concerns about their ability to make sound financial decisions, for example wealth achieved as a result of lottery winnings, celebrity, inheritance, etc.
- The Panel agrees with the proposed factors to be assessed; however, we believe that firms should also be required to assess the client's understanding of any contemplated products or services.
- It is absolutely critical that elective professional clients understand all of the associated investment risks. Given that this can be complex, we would urge the FCA to either provide guidance as to this knowledge assessment or to encourage the industry to do so. A standardised approach is likely to provide the greatest protection for both clients and firms.
- The Panel would like the FCA to engage in research evaluating if there is any psychological pressure for opting out as an elective professional client, and we believe that this research should be done prior to agreeing that firms may initiate an opt-out discussion with clients. Additionally, the FCA should track any other noteworthy behaviour trends and conduct research whenever indicated.
- The Panel accepts that an FCA-mandated periodic reassessment is unlikely to improve consumer outcomes, as it could become a tick-box exercise. However, we do believe that firms must define their own mandatory timelines for reassessments and have documented policies and procedures in place explaining when and how the firm will conduct the reassessments.
- The Panel would like the FCA to revisit its proposals relating to per se professional clients as we believe that regulated entities that do not have the capacity to act as such are captured.

- The FCA must continue to use the tools of multi-firm and good and poor practice reviews, and to take action whenever indicated, including enforcement. We also suggest that the FCA conduct surprise “revisits” to firms found to have engaged in particularly poor practices in prior reviews. This should help to minimise the firm behaviours noted in 2.10 to 2.12, 3.2, 3.65, and 3.101 as well as recently published multi-firm and good and poor practice reviews.

These concerns and other points are further detailed in our responses to the questions on client categorisation in the Appendix.

### **Conflicts of interest**

The Panel agrees with the FCA that firms must manage and be fully transparent about any conflicts of interest. We appreciate that the rules have become complex over time arising from the integration of different directives and regulations. As long as there are no reductions in client protections associated with the rationalisation of rules relating to conflicts of interest, the Panel supports the initiative. We generally believe that greater clarity for firms is likely to result in better outcomes for consumers. We did not identify any issues of concern with the proposals in the CP; therefore, we did not answer the questions dedicated to conflicts of interest.

In closing, the Panel thanks the FCA for engaging stakeholders on these important topics, and we look forward to future discussions. In that light, we ask the FCA to consider the following for both the client categorisation and conflicts of interest topics:

- The Panel would appreciate an explanation of the metrics that the FCA has defined and will monitor to establish whether or not the implemented proposals are accomplishing the intended objectives, as well as to identify any negative unintended consequences.
- At the appropriate time, the Panel would be keenly interested in the FCA’s post-implementation review to understand any lessons learned that could be applied to further consultations.
- We would also like the FCA to provide to the Panel any expected timelines for future multi-firm and / or good and poor practice reviews that might be relevant to these topics. For example, the multi-firm review of client categorisation in corporate finance firms: high-level observations and the recently published good and poor

practice report on complex exchange traded products were very helpful reading.

Yours sincerely,

Chris Pond  
Chair, Financial Services Consumer Panel

## **Appendix**

**Question 1. Do you agree with the deletion of the mandatory quantitative criteria from the qualitative assessment, (other than for local authorities)? [Yes, No, No view]**

**If yes or no, please explain your answer.**

Yes, given that more appropriate consumer protections are included in the CP, the Panel agrees with the deletion of the mandatory quantitative criteria. For example, we agree with the FCA's conclusion that high frequency trading (the criteria of 10 trades per quarter over the previous four quarters) is not a valid measure of experience. This criterion would also exclude sophisticated investors who have a buy and hold philosophy.

**Question 2. Do you agree with the proposal to introduce a new alternative for clients above a certain wealth threshold to opt out of retail protections, subject to informed consent and wider FCA client protection rules? [Yes, No, No view]**

**If yes or no, please explain your answer.**

Yes, the Panel agrees as long as appropriate consumer protections are in place. Informed consent is essential. The loss of each protection must be clearly explained to the consumer in a fully transparent manner. We would want to see that consumer understanding is tested and that consumers must specifically accept the loss of each protection in writing. Please also see our response to Question 3.

**Question 3. Do you agree that the threshold for this assessment, set at £10 million, is an appropriate level to balance client protection with reducing regulatory burden on firms? [Yes, No, No view]**

**If yes or no, please explain your answer.**

Not everyone who has £10 million in wealth is capable of making financial decisions that are in their best interest. Those who have come into wealth by means that are not indicative of financial experience can make poor decisions that seriously jeopardise their financial future. For example, people who gain their wealth from inheritance, celebrity, lottery winnings, etc. are often ill-prepared to manage their finances, but the amount seems large until it is gone. Therefore, we propose that there is an exception to the £10 million threshold. This exception should apply in the

case of a potential investor whose source of wealth would give rise to concerns about their financial capability. Given that firms should be establishing source of wealth for financial crime purposes, we do not believe that this imposes any additional burden on them. The Panel recognises that this may not always be obvious, therefore, the FCA should provide guidance as to what falls into the exception criteria.

**Question 4: Do the proposed Relevant Factors allow firms flexibility in demonstrating how they have determined a client has acquired the capability to be treated as a professional client? Are there any other factors that firms should be required to consider? [Yes, No, No view]**

**If yes or no, please explain your answer.**

The Panel is very appreciative that the FCA has stated that investor self-certification is not adequate as a means for assessing financial competence and that firms must make and document their own assessments. For this purpose, the proposed Relevant Factors seem reasonable, except that we also urge the FCA to include product / service knowledge as a factor. A consumer must be able to demonstrate an understanding of the particular product(s) and service(s) in which they expect to invest, including the associated risks. In addition, the Panel has the following comments:

- The Panel agrees that appropriate experience in financial services is contingent upon an individual's understanding of the sector, which is dependent on the individual's roles and responsibilities rather than simple employment in the financial services sector. The Panel also agrees that this experience and knowledge can be gained in other sectors, including academia. Experience must be demonstrated by a practical understanding of the markets, products, and associated risks.
- An investor's investment history is also a good indicator of relevant experience, but high trading frequency may actually be an indicator of poor understanding, and a history of low trading volume may be an indicator of expertise.
- The Panel agrees that the knowledge, understanding, and ability to assess risk is a key factor. In order to identify whether a consumer has the requisite expertise, the Panel suggests that the FCA should encourage the industry to develop a standard assessment approach or should provide guidance to firms.

- Please refer to our response to Question 2 regarding what we propose as required documentation associated with a consumer's decision to opt out of consumer protections.
- We agree that any adverse information that comes to light regarding an individual's financial capability must be considered by the firm. Please also refer to our response to Question 3 for additional thoughts.

**Question 5. Do our proposed rules and Handbook guidance give firms sufficient clarity on how to conduct an adequate assessment of a client's capability to be treated as a professional client? [Yes, No, No view]**

**If yes or no, please explain your answer.**

As noted in our response to Question 4, we would like to see either industry standard or FCA guidance to provide clarity about the assessment of a consumer's understanding of investment risks. In addition, the Panel encourages the FCA to subsequently conduct either a good and poor practice review and / or a multi-firm review to establish that firms properly implement the overall assessment process.

**Question 6. Do you agree that financial resilience as a Relevant Factor should be outcome-based, without any minimum financial threshold? [Yes, No, No view]**

**If yes or no, please explain your answer.**

Yes, the Panel agrees that a holistic assessment of a consumer's financial resilience is an essential factor, and if properly evaluated, should replace the need for a minimum financial threshold. However, once again, we encourage the FCA to examine the approach taken by firms as part of a good and poor practice and / or multi-firm review. If it appears that firms are not addressing this with the consumer's best interest in mind, specific guidance and or rules should be added to mitigate weaknesses.

**Question 7. Do you agree with our proposal to continue to allow opting out in relation to specific products and services, or generally in relation to all products and services? [Yes, No, No view]**

**If yes or no, please explain your answer.**

Yes, the Panel agrees that consumers who have the appropriate understanding and expertise should be able to opt out of protections for either specific products and services, or more generally. However, as noted in our response to Question 4, we believe that they should be able to demonstrate appropriate product / service knowledge for any investment under the opt out. This includes, but is not limited to, high risk or illiquid investments.

**Question 8. Do you agree with our proposal to maintain the current qualitative and quantitative assessment for local authorities? [Yes, No, No view]**

**If yes or no, please explain your answer.**

No view.

**Question 9. Do you agree with the proposed requirement that firms must obtain the client's informed consent to opting out of retail protections and being treated as a professional client? [Yes, No, No view]**

**If yes or no, please explain your answer.**

Yes, the Panel agrees that the firm must obtain the client's informed consent to opt out of retail protections. Please refer to our response to Question 2 for further details.

**Question 10. Do our proposed minimum disclosure requirements to inform the client's consent, including reliance on the firm's existing Consumer Duty obligations, pose any particular challenges? [Yes, No, No view]**

**If yes or no, please explain your answer.**

We agree that the disclosure requirements and reliance on the Consumer Duty should mean that firms will act in their clients' best interests. However, as the FCA noted in paragraph 2.10 and supported by multi-firm reviews, firms have not always done so. To encourage the right behaviour, the FCA must make it clear that action will be taken, including enforcement, when firms fail to obtain client consent in a fully transparent, fair, and properly documented manner.

**Question 11. Do you agree with our proposals to allow firms to**



**initiate discussions with clients about opting out of retail permissions, where they have a reasonable basis for believing the client will meet the professional client threshold, and to the proposed conditions for such communications? [Yes, No, No view]  
If yes or no, please explain your answer.**

No, the Panel is not comfortable with firms initiating these discussions, unless the client has specifically requested an investment that requires them to be a professional client. Even if the firm does not engage in practices designed to incentivise, induce, or pressure the client; for some, there is likely to be significant psychological benefit to be seen as a sophisticated and worldly investor which can be achieved by being labelled as a professional client. If the FCA does decide to go ahead with this proposal, it should carry out research to understand this dynamic.

**Question 12. Will our proposals for change, taken together, allow firms to have appropriate engagement with clients about opting out, without communicating financial promotions about specific professional-only products before a firm has met the conditions for categorising a client as elective professional? [Yes, No, No view]**

**If yes or no, please explain your answer.**

No view.

**Question 13. Do you agree with our proposal not to require periodic reassessment of all elective professional clients, but to make clear firms must reassess any client they should reasonably suspect no longer meets the conditions for the categorisation? [Yes, No, No view]**

**If yes or no, please explain your answer.**

No, in addition to the FCA proposal of a reassessment when indicated, the Panel believes that firms should formalise a periodic reassessment of all elective professional clients. We do not expect that the FCA would need to mandate the frequency, and the frequency could differ by client. However, firms should explain their approach to elective professional reassessment in their internal governance, and as noted in paragraph 3.91 of this consultation, the FCA should require that the reassessment is documented and is reasonable given the profile(s) of the firm's clients.

**Question 14. Taken together, do our proposals adequately balance protecting consumers from being inappropriately categorised, with reducing obstacles to clients accessing the products and services that meet their needs and risk profile? [Yes, No, No view] If yes or no, please explain your answer.**

The Panel agrees that the FCA's proposals are an excellent starting point, however, as we note in our cover letter and our previous and following responses, we do believe that there is more that firms and the FCA could do to improve consumer protection, and we do not believe that these suggestions add any new obstacles.

**Question 15. Do you agree with our proposed approach to rely on existing client safeguarding and governance rules (e.g. 'client's best interests' rule, fair clear and not misleading rules, SYSC rules and the Consumer Duty) rather than introduce additional new safeguards specifically for the elective professional categorisation process? Would the Consumer Duty be sufficient rather than any of our proposed new rules? [Yes, No, No view] If yes or no, please explain your answer.**

We agree that the existing client safeguarding and governance rules should establish a basis that firms will act in their clients' best interests. However, as the FCA noted in several paragraphs, firms have not always done so. To encourage the right behaviour, the FCA must make it clear that action will be taken, including enforcement, when firms fall short of these expectations. The FCA must also conduct multi-firm and / or good and poor practice reviews to further strengthen the message. This must cover a random selection of firms, particularly those which are not actively supervised. Follow-up visits are warranted for firms which are non-compliant.

**Question 16. Do you think that our proposals to remove the list of types of entities in COBS 3.5.2R(1) simplify the per se professional criteria? [Yes, No, No view] If not, should we retain the list or make any amendments to the list?**

and

**Question 17. Do you agree this category should include SPVs, and if so, do you agree with our proposed definition of an SPV for this**

**purpose? [Yes, No, No view]**

**If yes or no, please explain your answer.**

and

**Question 18. Do you agree with our proposals to remove the distinctions in thresholds for categorising large undertakings and trustees other than pension trustees for MiFID and non-MiFID business? [Yes, No, No view]**

**If yes or no, please explain your answer.**

Please note that this response applies to Questions 16, 17, and 18.

The Panel is concerned about the proposals relating to the classification of per se professional clients, primarily because we are concerned that the resulting lack of clarity may have negative unintended consequences. It is clear that the FCA did not receive feedback from all potentially impacted sectors. We are especially concerned that some regulated entities should NOT be classified as per se professional clients, and that there will not be a mechanism to properly exclude them. We agree that the current list is not helpful, but we suggest that the FCA consider inclusion or exclusion by balance sheet totals and / or by regulated activity(ies). For example, a regulated entity authorised only to provide debt advice should not be categorised as a per se professional client. If balance sheet totals are used, the Panel believes that these should be the same regardless of the type of entity. Any other entity should be categorised as a retail client, which could then opt out following the appropriate assessments.

**Question 19. Do you currently categorise clients under the criteria we propose to remove (COBS 3.5.3R(3)(a)-(d))? [Yes, No, No view] If yes, do you see any challenges in applying the MiFID criteria?**

No.

**Question 20. Do you agree that pension trustees should currently continue to be treated as per se professional clients for non-MiFID business? [Yes, No, No view]**

**If not, what do you think the criteria should be for categorising those trustees? Should it be a monetary threshold, and if so what, or something else, such as single vs master trust?**

No, the Panel is not convinced that all pension trustees should be treated as per se professional clients. Whilst they have overall responsibility for pension investments, they are often advised by external professionals (who would likely be categorised appropriately as per se professionals). We believe it would generally be more reasonable to categorise trustees of master trusts as per se professionals; less so, for single trusts. We also do not believe a monetary threshold is a suitable approach, as the size of the scheme may not be the best indicator of the expertise of the individual trustees.

**Question 21. Do you agree with our proposals to clarify the record keeping requirements for client categorisation? [Yes, No, No view]**

**If yes or no, please explain your answer.**

Yes, we strongly support the FCA's proposals to clarify the record keeping requirements for client categorisation. We agree that the firm must keep complete records that explain the categorisation and how the categorisation was undertaken. These records should include the information the firm used, the verification and evidence, and the decision process to come to a conclusion. In addition, as per our response to Question 13, we would also expect firms to include written policies and procedures relating to periodic reassessments of categorised clients, and to retain similar documentation associated with the reassessment.

As previously noted, the FCA must be clear that it will continue to conduct multi-firm and / or good and poor practice reviews to ensure that firms are in fact keeping the appropriate documentation and to take enforcement action when serious failings are identified. This should be based on random selection across the sector(s) to encourage firms to comply.

**Question 22. Do you agree our proposal to remove the disapplication of COBS 3.8 for firms not carrying out designated investment business, as set out in COBS 3.1.3R, will make the record keeping obligations for these firms clearer? [Yes, No, No view]**

**If yes or no, please explain your answer.**

Yes, the Panel agrees that COBS 3.8 should apply to all firms. There is no good reason to exclude firms not carrying out designated investment

business from an expectation to maintain proper policies and procedures and to document its client categorisation approach.

**Question 23. Question 23: Do you agree with our proposal to clarify COBS 3.2.3R(4)? [Yes, No, No view]**

**If yes or no, please explain your answer.**

The Panel does not currently support the proposal to amend COBS 3.2.3R(4) as we are concerned such a change could limit legal protections available to investors and participants (whether professional or otherwise) in the underlying fund if the fund is the client and it doesn't have a separate legal entity. At the very least, there should not be any reduction in the protections for non-elective professional clients who invest or participate in the underlying funds, and any change should ensure such investors are expressly safeguarded.

However, we would welcome further information from the FCA on the likely consequences of any proposed change to help ensure the Panel is properly informed on this issue.

**Question 24. How might the differences between our proposed changes to client categorisation and the other regimes affect you? Please explain your answer.**

No response.

**Question 25. Do you agree that a one off re-categorisation of existing elective professional clients is the right way to ensure the integrity of the elective professional regime going forward and achieve our goal of resetting how firms differentiate between retail and professional clients? [Yes, No, No view]**

**If yes or no, please explain your answer.**

Yes, the Panel agrees that a one-off re-categorisation effort is optimal and agree that a transition period is needed for this exercise. This will ensure that clients are properly categorised. Although the FCA has stated that a firm does not need to re-notify clients if their categorisation does not change, the Panel suggests that clients should be notified so as to remind the client of the consumer protections they do not have. It may also be helpful for the FCA to publish a press release at go live to alert potentially impacted consumers.

**Question 26. If you are an authorised firm, do you anticipate our**

**proposed changes could lead to you seeking to vary your part 4A permissions? [Yes, No, No view]**

**If yes or no, please explain your answer.**

No response.