

# Summary of feedback received

March 2018

Consultation title	GC17/5: Guidance on the FCA's approach to the review of Part VII insurance business transfers
Date of consultation	15 May 2017 – 15 August 2017
Summary of feedback received	<p>We received 22 responses to this consultation from a wide range of respondents. They included regulated firms, legal firms, advisory firms, legal professionals and trade associations on behalf of their members, and one professional body.</p> <p>This document provides a summary of the feedback we received and our responses.</p> <p>Overall respondents were supportive of the guidance, and welcomed the FCA clarifying its approach to reviewing Part VII insurance business transfers.</p> <p>However, a number of respondents thought that the examples included in the draft guidance were binding rather than illustrative. This led to comments being made about the guidance being too prescriptive or irrelevant to some parts of the industry.</p> <p>A number of respondents suggested that we could be clearer about how the guidance applies, including to specialist firms or specific types of business.</p> <p>A number of respondents provided comments about the FCA's interpretation of FSMA and the definitions within it.</p> <p>We also received requests for various minor clarifications.</p> <p>In a number of areas, respondents asked for amendments which go beyond the scope of this guidance. For example, some respondents asked for:</p> <ul style="list-style-type: none"> <li>• our guidance to be more prescriptive, phrasing our expectations more strongly in this document</li> <li>• guidance on detailed EU Withdrawal-specific arrangements</li> <li>• changes to the twin-peaks regulatory framework and the coordination between the FCA and the PRA</li> </ul>

### Response to feedback received

- creation of various tools and standards to help firms in preparing for the Part VII process

We have not made amendments of this kind. While we appreciate that firms want certainty, this guidance is intended to provide high-level information and examples to help firms understand our expectations and to help them in preparing their proposed transfers.

We may take some of these suggestions forward as separate process improvement initiatives. However, this is beyond the scope of this guidance.

We would like to thank all respondents for taking the time to reply and for the constructive feedback we received. We have carefully considered all responses and have revised our guidance where appropriate.

#### 'Comply or explain'

Three respondents felt that the introduction to the consultation suggested that we were adopting a 'comply or explain' approach. This, they felt, was disproportionate and not in line with previous FCA practice.

**Our response:** We do not want the guidance provided in this document to make the process more unwieldy or costly than it currently is. We have amended the introductory statement to clarify that the purpose of the guidance is to help firms identify areas of the transaction that differ from the expectations and examples covered in this guidance early in the process and avoid delays closer to the court dates.

#### Competition

Five respondents questioned whether our expectations of the Independent Expert's consideration of competition matters, as set out in the draft guidance, were appropriate. This is because Independent Experts are usually actuarial specialists and may not have the required expertise to comment on competition matters.

**Our response:** We have clarified our expectations in the section on competition considerations. While we do not expect Independent Experts to be competition specialists, we would expect them to highlight if there are competition-related matters which could affect policyholders.

### COBS 20 transitional provisions

Some respondents disagreed with our guidance on the scope of COBS 20 transitional provisions. They argued that where a proposed Scheme merely lifts and drops provisions from a previously court approved scheme, then COBS 20 allows those provisions to continue even where they are inconsistent with current COBS 20 rules.

**Our response:** We recognise that firms take the view that they are able to rely on COBS 20 transitional provisions. But our position is that, in many cases, firms will need to consider applying for a waiver to achieve the outcome they want. We have made some changes to clarify this but our view remains the same.

### Definition of materiality by Independent Experts

Three respondents commented on Independent Experts defining materiality and our expectations of this definition.

**Our response:** We have clarified the statement to explain that, while we are aware that Independent Experts sometimes provide definitions of materiality in their reports, it is not an FCA requirement for them to do this. We have included our description of what we would consider when reviewing the appropriateness of these definitions.

### Excluded policies in the Scheme

Two respondents acknowledged the need for greater specificity in the language within Scheme documents describing transferring business and excluded business. They called for further clarity and examples of our expectations for third-party and intra-group transfers.

**Our response:** We have updated this section and included examples of Scheme wording on transferring business and transferring liabilities.

### Future changes to the Scheme

Four respondents commented on a number of points we made on future changes to the Scheme. They sought clarification on which types of changes would trigger the requirements, the expectations we have of the Independent Expert where one is required, and clarity on the involvement of the regulators and Courts based on the nature of the changes.

**Our response:** We have amended the relevant sections to provide clarity about the types of changes that would require a return to Court, our expectations of the Independent Expert and the scope of their work, and the notice period we require to consider the proposed changes.

### Scheme effective date and re-notification of policyholders

Three respondents challenged a statement in relation to the Scheme effective date being delayed and causing the notifications to become out of date. The draft guidance referred to a delay of two months being likely to cause a need for re-notification. The respondents argued that established industry practice currently uses three months as a starting point for consideration as to whether a re-notification is required and appropriate.

**Our response:** We note the respondents' comments and their understanding of common practice in the industry. We have amended this section to change two months to three months. We have also re-stated our view that the merits of each case should be taken into account by the Applicants and would be taken into account by us together with proportionality considerations when deciding whether a re-notification of policyholders is required.

### Ancillary orders

Two respondents asked for clarification about the circumstances that would cause us to consider objecting to requests to change the Scheme involving the Court exercising its powers.

**Our response:** We have added a further example in this section to illustrate our approach and clarify why this is a regulatory issue.

### Changes to FOS and FSCS coverage

Two respondents sought clarity over our expectations for the analysis of regulatory protections post-transfer. In particular, how these expectations might be met by firms making transfers given the United Kingdom's withdrawal from the European Union.

**Our response:** We have expanded this section to describe our expectations of firms undertaking such transfers. We have added detail around the scope of regulatory regime comparison that we expect for transfers with cross-border elements.

### Independent Experts' reliance on the work of other experts

Seven respondents sought clarification of our expectations for the legal advice regarding non-EEA courts recognising the transfers. We also received comments about the circumstances when we would seek to review such advice.

**Our response:** We have expanded this section with further details on the rationale for our expectations, what mitigations the applicants should consider and what analysis we expect the Independent Expert to carry out. We have also clarified when and what kind of advice we would seek to review.

### Definition of policyholder

A number of respondents said our interpretation of the definition of policyholder was too broad. They believed that our definition should not extend to, for example, employees under an employer's liability policy or beneficiaries under a trust where a policy is taken out by the pension trustee.

**Our response:** We acknowledge that there are compelling different views on some of the categories we describe in our guidance. It is not necessary for us to accept these arguments, given the uncertainty of the scope of the definition of policyholder. Instead, where appropriate, we are open to firms applying for dispensations that would achieve the same outcome.

### Broker communications

Four respondents challenged our expectation of firms in the event brokers refuse to assist with the communications exercise. Respondents were concerned that we would expect firms to enforce contractual obligations or in some circumstances even ask the Court to make an order forcing the brokers to assist with the policyholder notifications.

**Our response:** Our expectation is that brokers and other authorised third-parties should help facilitate the notification process in light of the FCA's Principles of Business (Principles 3 and 7). However for us to consider a dispensation application, the Applicants would need to demonstrate that they have considered all reasonable options for engaging the brokers in the notifications exercise.

### Policyholder pack and method of communication

Three respondents argued that our expectation that a policyholder pack should include printed copies of the IE's report

	<p>summary, Scheme summary, and various supporting documents is disproportionate. They also questioned the effectiveness of such postal notifications in light of current communications preferences and widespread use of, and access to, the internet.</p> <p><b>Our response:</b> We are willing to consider communications plans with proposals for postal and/or digital notifications as well as the combination and scope of the documents included. Our expectation is that Applicants should set out why the chosen format and delivery method of the policyholder packs is appropriate for the specific transfer, considering policyholder profile, complexities of the Scheme and other relevant factors. We have clarified the guidance to reflect this.</p>
--	--

<b>Changes made to the guidance as a result of feedback received</b>	<p>We made a number of changes to the drafting of the finalised guidance to give greater clarity on the above points.</p> <p>We have made some changes to text where necessary to improve the drafting and address other minor comments about clarity.</p>
--	--

You can access the full text of the guidance consulted on <a href="#">here</a>	
--	--