

19 December 2019

Our Ref: FOI6766

## **Freedom of Information: Right to know request**

Thank you for your request under the Freedom of Information Act 2000 ("the Act"), dated 11 September 2019, for the following information (to note the sequence of the questions has been numbered for ease of reference):

*"I am seeking information on the FCA's work as part of the Financial Services Regulatory Partners Phoenixing Group (detailed here: <https://www.fca.org.uk/news/statements/fca-launch-financial-services-regulatory-partners-phoenixing-group>)*

*I would like to know:*

- 1. How many times the group has met or shared information since being launched in May 2019?*
- 2. Which senior staff members at the FCA are responsible for the group?*
- 3. How many advice firm authorisation requests have been turned down by the FCA over concerns about phoenixing since May 2019?*
- 4. How many advice firm authorisation requests were turned down by the FCA over concerns about phoenixing in the four months to April 2019?*
- 5. How many advice firm authorisation requests were turned down by the FCA over concerns about phoenixing in 2018?*
- 6. How many advice firm authorisation requests were turned down by the FCA over concerns about phoenixing in 2017?*
- 7. I would also like to see any minutes or preparatory material from meetings with other regulatory bodies as part of the phoenixing group?"*

In our emails of 9 October, 6 November and 4 December 2019 we advised we needed more time to consider whether the balance of public interest in the retention of information outweighed the public interest in its disclosure. I can now confirm we have now completed this exercise and the outcome is detailed below:

### **Question 1:**

The regulatory partners phoenixing working group has met twice, for its inaugural session in April 2019 and again in November 2019. According to its terms of reference, the group meets at least once a year. In practice, it is likely to meet twice a year. The next meeting is scheduled for May 2020. Outside of formal meetings, data is shared on a regular basis and views are exchanged between group members by phone or email.

### **Question 2:**

Sarah Rapson, Director of Authorisations, leads on phoenixing for the FCA, and on that basis she oversees the FCA's input to the working group.

### **Questions 3-6:**

Final notices detailing refusals of applications for authorisation are published on the FCA website. The FCA has not issued any final notices of refusal to financial advice firms over concerns about phoenixing since 2016. However, in January 2019 the FCA issued warning notices to two separate firms of its intention to refuse their applications over concerns that they were deliberately attempting to avoid liabilities to consumers or their poor conduct history in the financial advice sector. Both firms withdrew their applications on receipt of the warning notices and final notices were therefore not required. In five other cases, four financial advice firms and one financial adviser have withdrawn their applications where the FCA has informed them of concerns about phoenixing and previous conduct, but before a warning notice has been issued.

**Question 7:**

Whilst I can confirm that we hold information relevant to this point of your request, we are unable to disclose this to you, as we are of the view that such disclosure would, or would be likely to, prejudice the exercise by the FCA of its functions for the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise. Therefore, the qualified exemption under section 31 (Law enforcement) of the Act applies. This exemption applies here, as disclosure would, or would be likely to, prejudice the exercise of our function of "ascertaining" or monitoring compliance with our regulatory requirements over time (as opposed to during an ongoing investigation). For a detailed explanation of why this exemption applies, please refer to the below Annex A.

If you are unhappy with the decision made in relation to your request, you have the right to request an internal review. If you wish to exercise this right you should contact us within 40 working days of the date of this response.

If you are not content with the outcome of the internal review, you also have a right of appeal to the Information Commissioner at Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF. Telephone: 01625 545 700. Website: [www.ico.org.uk](http://www.ico.org.uk)

## **Annex A:**

- **General right of access to information held by public authorities**

Under section 1(1)(a) of the Act, any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request. If the public authority holds information of the type specified in the request, the person requesting the information is entitled under section 1(1)(b) of the Act to have the information communicated to them. The rights in section 1(1)(a) and (b) are subject to a number of exclusions and exemptions.

- **Section 31 (Law enforcement)**

The qualified exemption in section 31(1)(g) of the Act applies for the purposes set out in 31(2)(c) because we are of the view that disclosure of the information requested would, or would be likely to, prejudice the exercise by the FCA of its functions for the purpose of ascertaining whether circumstances exist or may arise which would justify regulatory action in pursuance of any enactment.

This exemption is qualified and we have balanced the public interest for and against disclosure as required by the Act.

*For disclosure:*

- There is a strong public interest in favour of transparency and in the public being reassured about the effectiveness of our regulatory approach.
- Disclosure of the information would demonstrate how we respond to matters arising within the sector we regulate and would enable regulated firms and their senior management to better understand why and how we make decisions on regulatory matters.
- This, in turn, will facilitate comments on the FCA's regulatory and supervisory approach.

*Against disclosure*

- There is a strong public interest in the FCA being able to carry out its functions in the most effective manner possible. Disclosure of the information relating to question 7 above would be likely to prejudice our ability to do this as it may cause firms to act in a way that circumvents our regulatory processes.
- Disclosure of this information could lead to speculation which, in the absence of any further background information, could be taken out of context and could lead to the wrong conclusions being drawn in respect of our decision-making processes.
- We consider that disclosure of the information relating to question 7 would reveal the details of the strategies and tactics used in our supervision of the firms we regulate. This could affect the way that the FCA interacts with firms, and ongoing and future investigations would be likely to be prejudiced.

On this occasion, we have concluded that the balance of the public interest is in favour of not disclosing the information, for the reasons set out above.