Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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CMC Policy Team
Financial Conduct Authority
12 Endeavour Square
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By email: cp21-14@fca.org.uk

Dear Sir/Madam,

Financial Services Consumer Panel response to CP 21/14: Preventing claims management phoenixing by financial services firms

We welcome the FCA's proposals to address the particularly egregious behaviour of claims management phoenixing which allows claims management companies (CMCs) to profit from past misconduct with which they have been connected. We agree with the FCA's assessment of the harms this behaviour causes to consumers, market confidence and fair competition.

In particular, we agree with the FCA's view that claims management phoenixing incentivises firms to act against the interests of their customers. We believe that firms should be under a duty to act in the best interests of their customers, which would prevent this sort of misconduct occurring in the first place. We look forward to the outcome of the FCA's consultation on a new Consumer Duty which will set a higher bar for the standard of care that firms must provide to consumers, and, for many firms, require a significant shift in culture and behaviour.

We also welcome the setting of a specific target to eliminate Financial Services Compensation Scheme (FSCS) claims involving phoenixing connections within two years. Given that connections might not always be obvious, and that the FCA will not always be able to rely on notification from firms, there is a need for continued cooperation between the FSCS and the FCA to identify phoenixing. Both bodies should make wider use of data to improve the identification of phoenixing.

We are however concerned by the proposal to only apply the prohibition to new agreements. This would mean that CMCs which have already phoenixed could continue to act for, and profit from, customers on claims where they have an existing agreement. This is unethical for the reasons the FCA identifies – it incentivises CMCs to act against the interests of their customers and it is anti-competitive because CMC phoenixes use preferential knowledge of, or access to, claims to drive business. Therefore, we believe CMCs who have already phoenixed should be prevented from charging a fee on existing claims. In addition to this, the FCA should take robust supervisory and/or enforcement action against known phoenixes and relevant individuals. This would remove the potential reputational advantages gained by the phoenix appearing to do pro-bono work. Given the nature of the harm caused by CMC phoenixing, it is essential that firms and individuals involved in this misconduct are prevented from benefitting from it.

Yours sincerely,
Wanda Goldwag
Chair, Financial Services Consumer Panel