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Financial Conduct Authority  
12 Endeavour Square  
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18 January 2021

By email: [gc20-05@fca.org.uk](mailto:gc20-05@fca.org.uk)

Dear Sir/Madam,

**Financial Services Consumer Panel response to GC 20/5 – Guidance for insolvency practitioners on how to approach regulated firms**

We welcome the opportunity to respond to the FCA’s proposed guidance for insolvency practitioners (IPs) on how to approach regulated firms. When a firm fails, there is significant risk of consumer harm including financial loss, distress, loss of access to redress and loss of access to credit. It is therefore important that firm failures are handled appropriately and efficiently so that consumer harm is minimised and any client assets or safeguarded funds are distributed as soon as possible. We welcome the FCA sharing its knowledge and experience with IPs to help ensure this is the case, despite the fact IPs are not regulated by the FCA. The Panel strongly encourages the Insolvency Service and other relevant bodies to incorporate the proposed guidance in their own communications and to support compliance with it.

As the coronavirus pandemic continues, the potential for firm failures increases and the relevant skill and experience of IPs becomes all the more important. This guidance therefore comes at a crucial time and we particularly welcome the following elements:

- IPs should understand the business models of firms, the terms of firms’ regulatory authorisations and the regulatory requirements that apply.
- IPs should assess whether they have the capability and capacity to take on an appointment, bearing in mind their existing appointment and the size and complexity of the proposed appointment.
- IPs should communicate clearly and fairly with consumers and maintain sufficient resource to handle inbound contact.
- IPs should have clear and fair claims processes in place and complying with the CASS rules where applicable.

We welcome the FCA’s inclusion of a checklist in this guidance and would encourage it to consider this approach for future guidance to help make it as clear as possible what firms are expected to do.

**Payment Institutions and e-money institutions**

We note that the FCA has provided specific guidance for IPs in dealing with payments and e-money institutions (PIs and EMIs) which we believe is important. Despite some recent high profile, complex failures in this sector, we would expect IPs to be less experienced in dealing with these types of firms owing to their relative novelty.

The FCA's guidance should speed up the distribution of safeguarded funds to consumers, however it is imperative that changes are made to the insolvency framework for PIs and EMIs for consumers to be properly served. We therefore strongly support measures to create a special insolvency regime for such firms and believe that HM Treasury's work to develop this should be expedited.<sup>1</sup>

The urgency of this work cannot be underestimated given both the criticality of payments to consumers and the evident (through the FCA's own financial resilience survey<sup>2</sup>) vulnerability of some firms in the sector. Many of the users of these firms and their products may be:

- Vulnerable.
- Unbanked.
- Have no other recourse to funds or hold other forms of payment.
- Unaware of the underlying PI or EMI service they are using.

Therefore, ensuring they can gain prompt access to their funds is critical.

We have responded separately to HM Treasury's consultation where we again reiterate the importance of ensuring a regime is put in place swiftly.

Our answers to the specific questions posed in the consultation are included in Annex A below.

Yours sincerely

Wanda Goldwag  
Chair, Financial Services Consumer Panel

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<sup>1</sup> Insolvency changes for payment and electronic money institutions: consultation, HM Treasury consultation, 3 December 2020. <https://www.gov.uk/government/consultations/insolvency-changes-for-payment-and-electronic-money-institutions-consultation>

<sup>2</sup> FCA publishes coronavirus financial resilience survey data, 7 January 2021. <https://www.fca.org.uk/news/press-releases/fca-publishes-coronavirus-financial-resilience-survey-data>

## **Annex A – Responses to questions**

### **Q1: Do you agree with the considerations for IPs before a regulated firm's entry into an insolvency procedure in Chapter 2? If not, why not? Are there any other considerations that would be useful to consider?**

Yes. It is critical that IPs understand the business model and regulatory requirements that apply to a firm. We particularly welcome the FCA's guidance that IPs consider whether they have the capacity to take on an appointment, bearing in mind their existing appointments and the size and complexity of the proposed appointments. With a potential increase in regulated firm failures due to the coronavirus pandemic, it is important that IPs do not overstretch their resource. Considering not just the number but the complexity of appointments is key – a few complex failures may require significantly more resource than a greater number of simple failures.

### **Q2: Do you agree with our expectations on IPs at the point of a regulated firm's entry into an insolvency procedure in Chapter 3? If not, why not? Are there any other considerations that would be useful to consider?**

Yes. We particularly welcome the FCA's guidance on ensuring that communications to consumers are clear and that the IP has sufficient resource to deal with inbound consumer contact. A firm failure can be a worrying time for consumers and so it is important they can get the information they need as quickly and easily as possible. We would encourage the FCA to direct IPs to consider the varying communication needs of the affected consumers, especially vulnerable consumers. Not all consumers will be able to access digital channels and IPs should ensure they make alternative contact channels available. In addition, we are concerned that users may not be aware of the underlying PI or EMI service they are using and therefore not respond to communication from the IP.

It is important that consumers understand what regulatory protections apply to them. We therefore welcome the FCA's guidance for IPs to engage with the FOS and FSCS to help consumers access redress and/or protected deposits. IPs should explain consumers' FOS and FSCS rights in any communications with them.

### **Q3: Do you agree with our expectations on IPs during an insolvency procedure in Chapter 4? If not, why not? Are there any other considerations that would be useful to consider?**

Yes. We support the FCA's guidance to IPs that they should have a suitable claims process in place and ensure they comply with CASS rules where applicable.

We are pleased to see the FCA encouraging IPs to report suspected phoenixing.

### **Q4: Do you agree with our expectations when a regulated firm enters a restructuring procedure in Chapter 5? If not, why not? Are there any other considerations that would be useful to consider?**

No comment.