*Association of Mortgage Intermediaries' response to FCA CP21/14 Preventing claims management phoenixing by financial services firms*

This response is submitted on behalf of the Association of Mortgage Intermediaries (AMI) and the Association of Finance Brokers (AFB). AMI is the trade association representing over 80% of UK mortgage intermediaries. AFB sits within AMI and represents second charge (formerly secured loan) brokers.

Intermediaries active in this market act on behalf of the consumer in selecting an appropriate lender and product to meet the individual consumer's mortgage requirements. AMI members also provide access to associated protection products. AFB members also provide access to unsecured products.

Our members are authorised and regulated by the Financial Conduct Authority (FCA) to carry out mortgage, insurance mediation and consumer credit activities. Firms range from sole traders through to national firms and networks, with thousands of advisers.

## Response

**Q1. Do you agree with the harms that we have said arise from claims management phoenixing?**

We recognise that good claims management companies (CMCs) can provide a valuable service for consumers and have undoubtedly increased consumer awareness of previous bad practice in areas of financial services and facilitated the claims for compensation from those who have been affected by this. Customers should have a right to make a claim in the way that suits them, whether that be directly to the Financial Ombudsman Service, the Financial Services Compensation Scheme or, where they feel it appropriate, to one of these bodies with the support of a CMC.

We agree with the FCA's assessment of claims management phoenixing as a particularly egregious type of phoenixing. It allows those who have previously harmed consumers to further profit from these same, potentially now more vulnerable consumers. As such, we welcome the changes proposed as part of this paper. Our intermediary members, including many small firms and sole traders have also suffered due to the behaviour of CMCs in recent years, both directly due to a large number of vexatious and even spurious claims but also indirectly due to the increased regulatory fees and levies that have been the result of bad practice in other sectors and large increases in professional indemnity insurance premiums and excesses.

We agree with the harms stated in this paper to arise from claims management phoenixing. It should be highlighted that these harms do not only arise when the original firm winds up and directors/senior management then move to set up a claims management company (CMC), but also when individuals 'lifeboat' away and set up a new company whilst the other continues to trade. In such instances there is a risk that the individual's previous customers will be preyed upon as new business, capitalising on any perceived pre-existing relationship.

Moreover, as consumers who have suffered harm are more likely to be vulnerable and potentially less likely than other consumers to be financially resilient, we welcome these changes to protect consumers from the additional harm that could occur in the instance of CMC phoenixing.

**Q2. Do you agree that the proposals will not materially impact any of the groups with protected characteristics under the Equality Act 2010?**

Yes, we agree. We hope that these proposals will be of benefit to these groups.

**Q3. Do you agree that CMCs should be prohibited from carrying on FCA-regulated claims management activity in the circumstances we have proposed?**

We agree with the proposal to look at both direct and indirect connections.

We are concerned that these proposals may see a change of approach from some unscrupulous CMCs who may choose to lifeboat away to the Solicitors Regulation Authority (SRA) regulation in order to continue with their current business model. We are aware that the FCA has previously been working closely with the SRA looking at excessive charges from CMCs and we would welcome confirmation that this collaboration has continued and that the SRA is also considering measures that it could take to prevent firms from phoenixing to a different regulatory regime. The simple acquisition of a small solicitor firm looking to say retire, could be employed as a cover for this phoenixing.

**Q4. Do you agree that the prohibition should apply to the firms we have described here?**

Yes, we agree. We welcome the inclusion of lead generation activity within these proposals.

**Q5. Do you agree that the prohibition should apply to FSCS claims and potential FSCS claims in the way we have described here?**

No, we do not agree that this prohibition should only apply to FSCS and potential FSCS claims. Once the new rules are in place, the rules as stated seem to allow a CMC to commence activity for a consumer against a firm with which the CMC has connections. It is possible that an influx of claims against that firm would lead the firm to fail and claims to subsequently fall into the compensation scheme. This would then mean a disrupted consumer journey and a potential invoice for work that has not been completed with the customer having to take their claim elsewhere or complain directly to the FSCS. To mitigate this, it would seem sensible to prohibit claims management activity for all claims relating to FSCS or other activity including where the firm is still trading, where there is a “related person” connection.

We agree with the proposal that lead generation activity should be prohibited for claims relating to FSCS activity even if the firm is still trading. This should in theory, prevent additional firms from folding into FSCS and will also help to limit the effect on PII insurance that recent CMC activity has seen within the mortgage sector.

**Q6. Do you agree that the prohibition on lead generation should apply to pre-existing and new agreements, and the prohibition on advice, investigation or representation should apply to new agreements only?**

We agree that the prohibition on lead generation should apply to pre-existing and new agreements.

We recognise the FCA’s concerns about the inconvenience and disruption that customers would experience if CMCs cease managing their cases midway through. However, we believe the FCA to consider amending the proposals so that, whilst CMCs would be able to continue with the case, the firm should derive no profit from that case.

**Q7. Do you agree that the proposals should take effect 1 month from the date the rules are made?**

This seems a reasonable timescale, we agree.

**Q8. Do you agree that CMCs should be required to notify us as described in this chapter?**

We would like more detail on the requirement to notify. How long will a firm have to notify the FCA? Is there a requirement to notify the FCA in the interim if a new connected individual joins the firm? We are concerned that this rule be exploited by a firm using contractors who are not contracted to the firm for the period of the attestation.

We agree with the requirement that a firm should annually attest to the accuracy of the notifications but would appreciate clarification as to when the first notification will be required. Will this be within one month of the date that the rules are made or will this be one year after the rules are made? It is important that the proposed changes take effect quickly to prevent phoenixing and mitigate potential harms.