Response to the FCA's Consultation on

CP25/36:

Client Categorisation and Conflicts of Interest

From the Transparency Task Force

https://www.fca.org.uk/publication/consultation/cp25-36.pdf

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About the Transparency Task Force

The Transparency Task Force (TTF) is a UK-based Certified Social Enterprise with a formal mission to "Promote reform of the financial sector so it serves society better." We are

UK-based but are an international organisation with engagement in 20 countries throughout the world.

We are committed to driving positive change through transparency, accountability and integrity across financial services and beyond. We advocate for consumer protection, fair markets, and access to justice for those harmed by misconduct. We believe that ‘sunlight is the best disinfectant’ and our ‘North Star’ question is “what’s best for the consumer?”

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1. Introduction

The Transparency Task Force welcomes the opportunity to respond to the FCA's consultation on client categorisation and conflicts of interest.

We are responding from the standpoint of:

- Protecting consumers and victims,
- Promoting transparency in regulatory decision-making,
- Challenging weaknesses in the regulatory framework that enable misconduct, and
- Ensuring that changes to the regulatory framework do not inadvertently harm consumers.

This consultation proposes significant changes to how firms distinguish between retail and professional clients, and seeks to rationalise conflicts of interest rules. While we understand the FCA's objectives around supporting growth and reducing regulatory burden, **we are deeply concerned that these proposals prioritise industry convenience over robust consumer protection**.

The FCA's stated aim is to "unlock greater opportunities for wealthy investors, strengthen capital markets and drive economic growth" while maintaining appropriate safeguards. However, our analysis suggests that:

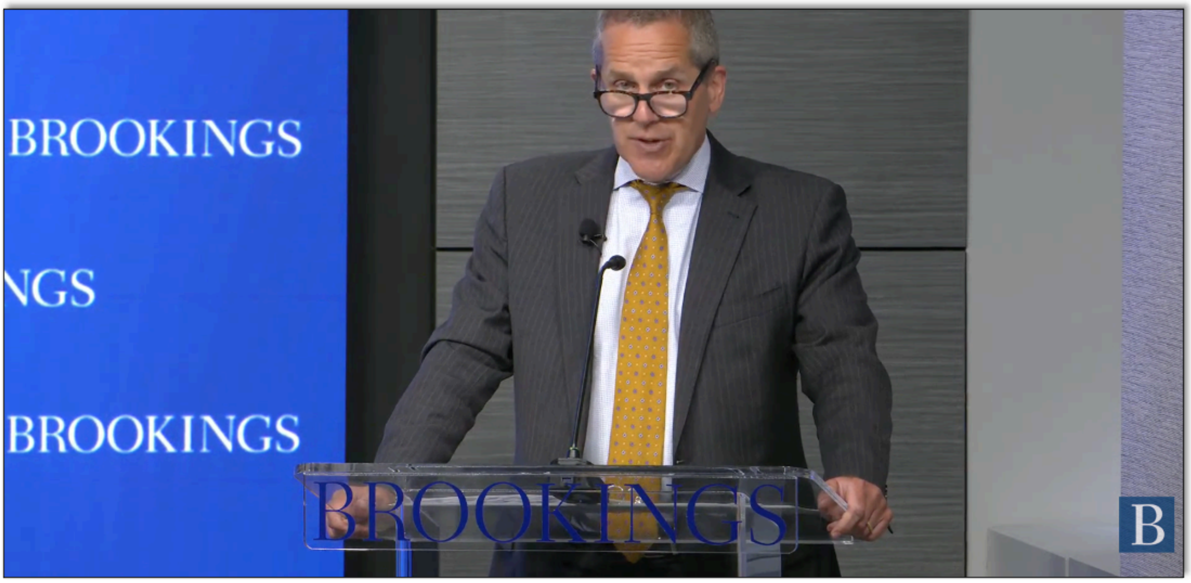
1. **The proposed changes create unacceptable risks of consumer harm** through weakened categorisation standards and inadequate safeguards.
2. **The FCA has not learned the lessons from past regulatory failures** where similar "light-touch" approaches led to widespread mis-selling and consumer detriment.
3. **The consultation lacks adequate consumer protection analysis** and fails to properly assess the risk of regulatory capture.
4. **The proposals are fundamentally incompatible with the Consumer Duty** and undermine the FCA's primary consumer protection objective.

We strongly urge the FCA to reconsider these proposals and prioritise consumer protection over succumbing to industry lobbying for deregulation.

We see the FCA's bowing to pressure from industry as a fundamental flaw in its regulatory approach. Rather than standing firm it is caving in.

The pattern of deregulation followed by mis-selling with consequential consumer detriment and reputational damage for the sector has been repeated many times, over many decades.

We respectfully urge the FCA to study this talk given by the Federal Reserve Governor Michael Barr, entitled ***"Booms, busts, and financial regulation"*** delivered in July 2025 at the Brookings Institute:



…and then completely reconsider its approach to regulation by standing firm against lobbying by the industry - please also see the excellent report by Positive Solutions: "The Power of Big Finance."

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2. Executive Summary of TTF's Position

On Client Categorisation

We oppose the proposals as currently drafted. While we recognise that genuinely sophisticated investors may benefit from accessing professional-only products, the FCA's proposals:

- Set the wealth threshold too low at £10 million

- Remove essential quantitative criteria without adequate replacement
- Rely excessively on the Consumer Duty as a safeguard, despite clear evidence it is not preventing harm
- Allow firms to initiate opt-out discussions, creating pressure on consumers
- Fail to require independent verification of client capability
- Do not mandate periodic reassessment of categorisation

On Conflicts of Interest

We support the rationalisation in principle but are concerned that:

- Simplification may obscure important distinctions between different types of conflicts
- The FCA provides insufficient guidance on when conflicts must be prevented versus managed
- There is no strengthening of accountability for conflicts failures

Key Recommendations

1. **Raise the wealth threshold to £25 million minimum** for the alternative assessment route
2. **Retain modified quantitative criteria** as essential safeguards alongside qualitative assessment
3. **Require independent verification** of client capability by a qualified professional
4. **Mandate annual reassessment** of all elective professional clients
5. **Prohibit firm-initiated opt-out discussions** - clients must initiate all requests
6. **Strengthen conflicts rules** rather than merely simplifying them
7. **Conduct a full consumer impact assessment** before implementing these changes
8. **Establish independent monitoring** of categorisation practices with public reporting

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3. The Wider Context: A Pattern of Regulatory Failure

Before addressing the specific consultation questions, we must contextualise these proposals within a broader pattern of FCA regulatory failure.

3.1 The FCA's Track Record on "Light Touch" Regulation

The FCA's history is littered with examples where prioritising growth and reducing regulatory burden over consumer protection led to catastrophic outcomes:

- **London Capital & Finance (LC&F)**: Over 11,600 bondholders lost £237 million. The FCA admitted serious failings in its regulation.
- **Woodford Investment Management**: Investors lost £3.7 billion. The suspension highlighted fundamental failures in FCA oversight.
- **British Steel Pension Scheme**: Mis-selling affected 7,700 people; compensation exceeded £71 million.
- **Blackmore Bond**: 2,000 investors lost £46 million after the FCA approved the firm despite red flags.
- **Car Finance Scandal**: Systematic wrongdoing affecting millions, with FCA failures dating back to 2016 when whistleblower evidence was ignored.

In each case, the FCA:

- Prioritised industry concerns over consumer protection
- Failed to act on early warning signs
- Allowed firms to exploit regulatory loopholes
- Left consumers to bear the costs

3.2 The Consumer Duty: Not the Panacea the FCA Claims

The FCA repeatedly states that the Consumer Duty provides sufficient protection to support its proposals. **This is demonstrably false.**

The Consumer Duty has been in force since July 2023 for most firms. Yet we continue to see:

- Widespread mis-selling
- Inadequate product governance
- Conflicted advice
- Systematic failures in treating customers fairly

According to the FCA's own Financial Lives Survey (May 2025):

- Only 39% of adults have confidence in UK financial services
- Only 36% believe most financial firms are honest and transparent

If the Consumer Duty were working as the FCA claims, these figures would be improving, not stagnating.

The Consumer Duty is principles-based, requiring firms to deliver good outcomes. But principles-based regulation only works when:

1. Firms act in good faith
2. The regulator actively supervises and enforces
3. There are clear, measurable standards

In the context of client categorisation, relying on the Consumer Duty as the primary safeguard is particularly problematic because:

- **The Duty does not apply to professional clients** - once a client is reclassified, they lose Consumer Duty protections
- **Firms have financial incentives to reclassify clients** - professional clients generate higher revenues with fewer regulatory constraints
- **There is no independent oversight** of firms' categorisation decisions

3.3 Regulatory Capture and the Growth Agenda

We are deeply concerned that these proposals reflect **regulatory capture** - where the regulator prioritises industry interests over its statutory consumer protection duty.

The consultation repeatedly emphasises:

- "Unlock greater opportunities"
- "Strengthen capital markets"
- "Drive economic growth"
- "Support innovation"
- "Reduce costs for firms"

Consumer protection is mentioned, but consistently as a constraint to be managed, not as the primary objective.

This reflects a fundamental misunderstanding: **sustainable growth requires consumer trust**. The FCA's own data shows that lack of trust is the primary barrier to market participation. Weakening consumer protections will exacerbate this trust deficit, ultimately harming the very growth the FCA (and the government) seeks to promote.

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4. Detailed Response to Client Categorisation Proposals

4.1 The £10 Million Wealth Threshold (Questions 2 and 3)

The FCA proposes allowing individuals with investable assets above £10 million to opt out of retail protections without a qualitative assessment of their capability.

TTF Position: We strongly oppose this proposal. The £10 million threshold is too low and the lack of capability assessment creates unacceptable risks.

Why £10 Million Is Too Low

Issue 1: Wealth ≠ Capability

The FCA acknowledges in paragraph 3.40 that "it cannot be assumed that even very substantial wealth equates in all cases with high investment literacy" and notes "some cases where individuals with high net worth have, without advice, over-estimated their competence, and others where wealthy individuals have fallen prey to unscrupulous or even unauthorised advisors."

Despite this acknowledgement, the FCA proposes removing all capability assessment for wealthy individuals. This is contradictory and dangerous.

Wealth can be acquired through:

- Inheritance (no investment experience required)
- Sale of a business (may have no financial markets experience)
- Property appreciation (passive wealth accumulation)
- Lottery or windfall (no relevant experience)
- Compensation payments (potentially from financial mis-selling!)

None of these routes to wealth demonstrate investment capability or understanding of complex financial products.

Issue 2: £10 Million Is Not "Very Substantial" in Modern Markets

The threshold of £10 million may have seemed high when such thresholds were originally conceived, but:

- London house prices mean many property owners have £10m+ in assets without any investment experience
- Corporate executives with equity packages can easily exceed £10m in investable assets
- Individuals who inherit or sell businesses may have £10m+ without financial markets knowledge
- £10m is not sufficient wealth to absorb losses from inappropriate professional-only products

International comparisons are instructive:

- **Singapore**: Accredited investor threshold is S$2 million (~£1.2m) BUT requires 12+ months banking relationship or advice relationship, AND is transaction-limited
- **Hong Kong**: Professional investor threshold is HK$8 million (~£800k) BUT only applies to specific products and clients retain significant protections
- **United States**: Qualified purchaser threshold is US$5 million BUT only for specific private funds, with extensive disclosure requirements

The FCA's proposal is far more permissive than these comparators, applying to all products and removing all retail protections.

Issue 3: The Wrong Clients Will Be Targeted

Firms will actively target clients close to the £10 million threshold because:

- These clients represent the largest pool of potential reclassifications
- They are wealthy enough to be attractive but not wealthy enough to have established sophisticated and protective advisory relationships
- They may be more susceptible to "status" appeals of being treated as professional

The FCA prohibits firms from "incentivising" clients to opt out, but in practice:

- Offering access to "exclusive" products is inherently an incentive
- The status of being classified as "professional" is appealing
- Firms can frame opt-out as a benefit without explicitly incentivising

TTF Recommendation:

If the FCA proceeds with a wealth-only route (which we oppose), the minimum threshold should be £25 million, with the following additional safeguards:

1. **Cooling-off period**: Minimum 30 days between initial discussion and categorisation
2. **Independent advice requirement**: Attestation from an independent financial adviser that opt-out is appropriate
3. **Disclosure requirement**: Clear disclosure of all products the client has invested in and would invest in
4. **Restricted scope**: Opt-out only for specific product categories, not blanket removal of all protections
5. **Enhanced monitoring**: Quarterly reporting to the FCA of all wealth-based categorisations
6. **Automatic reassessment**: Annual reassessment with right to opt back to retail status at any time

At £25 million, we believe the risk of significant financial hardship from investment losses is materially reduced, while still excluding the "merely wealthy" who may lack capability.

Question 1: Do you agree with deletion of the mandatory quantitative criteria from the qualitative assessment, (other than for local authorities)?

No. We strongly disagree.

The FCA proposes removing the current quantitative test (portfolio size, trading frequency, professional experience) as part of the qualitative assessment, except for local authorities.

The FCA's rationale is flawed. The consultation states (para 3.9-3.13) that the quantitative test is "too rigid" and doesn't reflect modern investors. However:

Issue 1: The Problem Is Not the Criteria, But Their Misuse

The FCA correctly identifies (para 2.10) that firms have misused the quantitative criteria by:

- Treating them as solely determinative
- Relying on self-certification
- Conducting inadequate qualitative assessments

The solution is not to remove the criteria, but to clarify how they should be used.

The quantitative criteria serve vital functions:

1. **Objective verification**: They provide objective, verifiable indicators that reduce subjectivity
2. **Comparability**: They enable consistent assessment across firms
3. **Deterrent effect**: They create a meaningful threshold that firms cannot easily manipulate

Issue 2: The Proposed Factors Are Too Subjective

The FCA's proposed "Relevant Factors" (para 3.47-3.53) are entirely subjective:

- "Occupational experience" - no specific requirements
- "Investment history" - no minimum standards
- "Financial resilience" - no thresholds
- "Knowledge and understanding" - no assessment criteria

This subjectivity creates huge scope for:

- Inconsistent application across firms
- Firms lowering standards to boost revenues
- Clients being incorrectly categorised based on weak assessments

Issue 3: Firms Cannot Be Trusted to Self-Regulate

The FCA's supervisory work (para 2.10-2.13) demonstrates that firms consistently take the path of least resistance:

- Weak assessments

- Self-certification
- Inappropriate opt-outs

Removing objective criteria will exacerbate these problems, not solve them.

TTF Recommendation:

Retain modified quantitative criteria as mandatory elements of the assessment:

1. **Portfolio size**: Minimum £500,000 in designated investments (to demonstrate meaningful investment activity)
2. **Investment history**: Minimum of either:
    - 40 transactions over 4 years (average 10 per year), OR
    - 20 transactions over 4 years in complex products (derivatives, structured products, alternative investments), OR
    - Continuous investment portfolio management over 5+ years
3. **Professional experience**: Minimum of either:
    - 2 years working in financial services in a relevant role, OR
    - 3 years as a senior executive in a corporate treasury function, OR
    - Relevant professional qualification (e.g., CFA, CISI Level 6, FCCA)
4. **Knowledge assessment**: Clients must pass a standardised assessment demonstrating understanding of:
    - Risk and return relationships
    - Leverage and margin
    - Product structures (derivatives, structured products)
    - Portfolio diversification
    - Impact of costs and charges
    - Protections they would lose

These criteria should be minimum thresholds - **meeting them does not automatically qualify a client as professional**. Firms must still conduct a holistic qualitative assessment. But these criteria ensure a minimum standard and prevent firms categorising clients who manifestly lack capability.

Question 2: Do you agree with the proposal to introduce a new alternative for clients above a certain wealth threshold to opt out of retail protections, subject to informed consent and wider FCA client protection rules?

No. We oppose this proposal.

See detailed analysis in Section 4.1 above.

Additional concern: "Wider FCA client protection rules" are inadequate

The FCA suggests that Consumer Duty and "client's best interests" rules provide sufficient protection. This is demonstrably false:

1. **Consumer Duty does not apply once client is reclassified** - the whole point of opting out is to escape retail protections including Consumer Duty
2. **"Client's best interests" rule is weakly enforced** - The FCA has almost never taken enforcement action purely for breach of this rule
3. **These are principles-based standards** - They do not prevent the specific harms of inappropriate categorisation:
    - Access to unsuitable complex products
    - Higher charges
    - Reduced disclosure
    - Loss of redress routes

TTF Recommendation:

If proceeded with (which we oppose), minimum threshold of £25 million with substantial additional safeguards as outlined in Section 4.1.

Question 3: Do you agree that the threshold for this assessment, set at £10 million, is an appropriate level to balance client protection with reducing regulatory burden on firms?

No. £10 million is too low.

See detailed analysis in Section 4.1 above.

Additional point: This is not about "regulatory burden"

The FCA frames this as balancing protection with burden on firms. This framing is wrong.

The "burden" of properly assessing client capability is:

- A core regulatory requirement
- Essential to consumer protection
- Not excessive for professional services firms

Firms in other professions (law, medicine, accountancy) must demonstrate client suitability for services. This is not considered an unreasonable "burden" - it is a professional responsibility.

The FCA should not reduce essential consumer protections to marginally reduce compliance costs for firms.

TTF Recommendation:

Minimum £25 million if this route proceeds at all.

Question 4: Do the proposed Relevant Factors allow firms flexibility in demonstrating how they have determined a client has acquired the capability to be treated as a professional client? Are there any other factors that firms should be required to consider?

The Relevant Factors allow too much flexibility, creating risks of inconsistent and inadequate assessments.

The proposed factors (para 3.47-3.53) are:

1. Occupational experience
2. Investment history
3. Financial resilience
4. Knowledge, understanding and ability to assess risk
5. Client's objectives for opting out
6. Adverse information

Issue 1: No minimum standards

None of these factors have defined minimum standards. For example:

- "Occupational experience" - How much? In what roles? How recently?
- "Investment history" - How many trades? In what products? How successful?
- "Financial resilience" - What level of wealth? What other obligations?

This vagueness enables firms to justify almost any categorisation.

Issue 2: Factors are not equally weighted

The FCA states (para 3.54) "It is not always necessary for a client to demonstrate strong indicators of expertise in every individual factor, but weakness in one should be compensated by proportionally greater strength in others."

This is dangerous. It allows:

- Wealthy but inexperienced clients to be categorised based on wealth alone

- Experienced but asset-poor clients to be categorised based on experience alone

Neither should occur without both minimum wealth and minimum capability being demonstrated.

Issue 3: Firms have financial incentives to lower standards

Professional clients:

- Generate higher revenues (can access more expensive products)
- Require less compliance overhead (no appropriateness tests, simpler disclosures)
- Create fewer complaints (losing Consumer Duty protection)

These incentives will push firms toward expansive interpretations of the factors.

Additional factors that should be required:

1. **Formal knowledge assessment**: Pass standardised test demonstrating understanding
2. **Regulatory history**: Any past complaints upheld, Financial Ombudsman cases, or regulatory sanctions should be considered
3. **Current financial commitments**: Mortgages, dependents, planned expenses that may affect ability to bear losses
4. **Investment objectives and time horizon**: Short-term speculators should not be categorised as professional
5. **Understanding of specific products**: Assessment must be product-specific, not general
6. **Access to professional advice**: Whether client has independent financial adviser who can provide appropriate counsel

TTF Recommendation:

The Relevant Factors should be supplemented with:

1. Minimum quantitative thresholds (as outlined in Question 1 response)
2. Standardised knowledge assessment
3. Defined minimum standards for each factor
4. Requirement to demonstrate strength across ALL factors, not just some
5. Product-specific assessment, not blanket categorisation

Question 5: Do our proposed rules and Handbook guidance give firms sufficient clarity on how to conduct an adequate assessment of a client's capability to be treated as a professional client?

No. The guidance is insufficient and will lead to inconsistent, inadequate assessments.

Issue 1: Guidance lacks specificity

The proposed COBS 3.5.3AG guidance provides examples but no standards:

- "Relevant occupational experience" - no minimum duration or role requirements
- "Buy-to-hold strategies may also be an indicator" - "may" is too weak
- "Personal investment history mainly in speculative high risk... is not usually an indicator" - "not usually" leaves too much discretion

Issue 2: No assessment methodology specified

The FCA does not specify:

- How should firms gather information? (interviews, questionnaires, documentary evidence?)
- What documentation must be retained?
- How should conflicting indicators be weighed?
- What constitutes adequate evidence of capability?

This will lead to:

- Tick-box exercises by some firms
- Robust assessments by others
- Inconsistent outcomes
- Regulatory arbitrage (clients moving to less rigorous firms)

Issue 3: Prohibition on self-assessment is good but insufficient

The FCA proposes (para 3.45) to prohibit firms from "inviting clients to undertake a self-assessment of the Relevant Factors, such as via an online form with click through access."

This is welcome but does not go far enough. Firms can still:

- Ask leading questions
- Accept verbal self-representations
- Design assessment processes that "guide" clients toward answers that support categorisation

Issue 4: No independent verification required

The firm conducts the assessment. The firm benefits from categorising the client as professional. This is an obvious conflict of interest, yet the FCA proposes no independent verification.

TTF Recommendation:

The FCA should:

1. **Publish detailed guidance** with specific minimum standards for each Relevant Factor
2. **Mandate assessment methodology**:
    - Structured interview with documented questions and answers
    - Knowledge test (scored assessment)
    - Documentary verification of experience and wealth
    - Investment history analysis
    - Product-specific risk disclosure and comprehension check
3. **Require independent verification**: Independent professional (not financially interested in the outcome) must review and attest that categorisation is appropriate
4. **Standardise documentation**: Template forms that must be completed for all categorisations
5. **Publish anonymised examples**: Regular publication of categorisation case studies (with personal details removed) showing what constitutes adequate versus inadequate assessment
6. **Supervisory monitoring**: Thematic reviews of categorisation practices with public reporting

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Question 6: Do you agree that financial resilience as a Relevant Factor should be outcome-based, without any minimum financial threshold?

No. There must be a minimum financial threshold.

The FCA proposes (para 3.50) that "financial resilience is an important determining factor" but "we agree that substantial wealth is not the only determinant of financial resilience, so we have not proposed setting a minimum quantitative threshold."

This is incoherent.

If financial resilience is important, it must be measurable and verifiable. "Outcome-based" without any threshold means:

- Firms can categorise clients with minimal wealth as professional
- No consistent standard across the market
- No way to verify appropriateness

Issue: What does "financial resilience" even mean without a threshold?

The FCA guidance states firms should consider "the client's financial capacity, risk tolerance and understanding of – and ability to bear – the potential losses they may incur."

But:

- A client with £100k portfolio could "bear" £100k loss (they lose everything)
- A client with £10m portfolio who has £8m mortgage and dependents cannot bear large losses
- A client with £500k who needs it for retirement in 5 years cannot bear losses

Without minimum standards, "financial resilience" becomes meaningless.

TTF Recommendation:

Minimum thresholds:

1. **Liquid investable assets**: £500,000 minimum (this is for qualitative route; £25m for wealth-only route)
2. **Free assets**: After deducting liabilities and committed expenses, client must have minimum £250,000 available for investment losses
3. **Loss capacity**: Client must be able to bear total loss of invested amount without:
    - Falling below £250k free assets
    - Compromising retirement provision
    - Affecting essential living standards
    - Forcing sale of primary residence

These are minimums. Meeting them does not automatically qualify for professional status, but failing them should disqualify them.

Question 7: Do you agree with our proposal to continue to allow opting out in relation to specific products and services, or generally in relation to all products and services?

We support product-specific opting out as preferable to blanket categorisation, but it must be mandatory, not optional for firms.

Why product-specific is preferable:

1. **Capability is product-specific**: Someone experienced in equity trading may lack understanding of structured products or derivatives

2. **Risk is product-specific**: Professional categorisation should match the products the client will actually use
3. **Proportionate protection**: Clients can access appropriate products while retaining protection for others

However, the FCA's proposal is too permissive.

The FCA states (para 3.56) "We recognise that not all firms will be able to offer clients this flexibility. We have therefore adapted our rules to allow firms to design processes that support their decision to only offer opt out if they intend to assess a client's capability as a professional client across all types of product and services they may offer."

This means:

- Firms can choose whether to offer product-specific opt-out
- Firms can force clients to opt out of ALL protections to access ANY professional product
- Clients have no right to request product-specific treatment

This will lead to:

- Firms adopting blanket opt-out (simpler for them)
- Clients forced to give up all protections to access one product type
- Over-broad categorisation

TTF Recommendation:

1. **Mandate product-specific assessment**: Firms must assess capability by product category
2. **Product categories** (minimum):
   - Equities and standard bonds
   - Collective investments (funds, ETFs)
   - Structured products
   - Derivatives and leveraged products
   - Alternative investments (private equity, hedge funds, real estate)
   - Cryptoassets
3. **Clients can be professional for some categories and retail for others**
4. **Annual review**: Categorisation must be reviewed annually for each product category
5. **Right to request retail treatment**: Clients can request retail treatment for any category at any time

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Question 8: Do you agree with our proposal to maintain the current qualitative and quantitative assessment for local authorities?

Yes, but this reveals the incoherence of removing these criteria for other clients.

If quantitative criteria are appropriate for local authorities, why are they inappropriate for individuals?

The FCA's position is internally contradictory:

- Local authorities must meet quantitative thresholds
- But individuals do not need any such thresholds

Local authority pension schemes manage £392 billion. Their investment decisions affect thousands of scheme members. It is entirely appropriate they must meet robust standards.

But individual clients' investments also matter - to them, their families, their financial security. Why should they face lower standards?

TTF Recommendation:

Retain quantitative criteria for all clients, not just local authorities.

Question 9: Do you agree with the proposed requirement that firms must obtain the client's informed consent to opting out of retail protections and being treated as a professional client?

Yes in principle, but the proposed "informed consent" provisions are inadequate.

"Informed consent" is essential. But the FCA's proposals do not ensure consent will actually be informed.

Issue 1: What constitutes "informed"?

The FCA proposes (para 3.62) consent is not informed unless: i. Client is given sufficient information about protections they are opting out of and time to consider ii. Clear and prominent warning about losing retail protections including redress

But:

- No minimum time period specified
- No requirement for independent advice
- No standardised disclosure format

- No testing of comprehension

Issue 2: Firms will design inadequate processes

Without prescriptive requirements, firms will:

- Provide minimum viable disclosure
- Use complex language
- Bury warnings in lengthy terms
- Rush clients through the process

Issue 3: No cooling-off period

Once consent is given, client is immediately reclassified. There is no opportunity to:

- Reconsider after sleeping on it
- Seek independent advice
- Research the implications

Issue 4: Power imbalance

The client-firm relationship is inherently unequal:

- Firm has professional expertise
- Firm controls information flow
- Firm can frame opt-out as beneficial
- Client may feel pressure to agree

"Consent" in this context is not truly free.

TTF Recommendation:

Strengthened informed consent requirements:

1. **Standardised disclosure document**:
    - FCA-mandated template
    - Plain English
    - Maximum 2 pages
    - Cover: (a) protections being lost, (b) implications for each protection, (c) redress rights being lost, (d) comparison of fees/charges as professional vs retail, (e) right to opt back to retail
2. **Minimum time period**: 30 days between disclosure and consent
    - Prevents rushed decisions
    - Allows time to seek advice
    - Provides cooling-off to reconsider

3. **Comprehension assessment**:
    - Client must answer questions demonstrating understanding
    - If client fails, cannot proceed with opt-out
    - Answers must be documented
4. **Independent advice requirement**:
    - Client must receive advice from independent professional
    - Adviser must attest that opt-out is appropriate
    - Cost paid by firm (to avoid barrier for client)
5. **Specific consent per product category**:
    - Separate consent for each product type
    - Cannot be blanket consent
6. **Audio/video recording**:
    - Consent discussion must be recorded
    - Recording retained for 6 years
    - Available to client and FCA on request
7. **Annual reconfirmation**:
    - Client must actively reconfirm consent annually
    - Failure to reconfirm = automatic reversion to retail

Question 10: Do our proposed minimum disclosure requirements to inform the client's consent, including reliance on the firm's existing Consumer Duty obligations, pose any particular challenges?

Yes. Significant challenges and inadequacies.

Challenge 1: Consumer Duty does not apply post-categorisation

The FCA relies heavily on Consumer Duty to ensure good outcomes (para 3.63). But:

Once a client is categorised as professional, Consumer Duty no longer applies to them.

This is not a minor point - it is fundamental:

- Consumer Duty requires firms to act in good faith toward retail clients
- Professional clients are explicitly excluded from Consumer Duty protection
- Therefore, Consumer Duty cannot prevent harm to professional clients

The FCA cannot use Consumer Duty as both:

- **Justification for removing retail protections, AND**
- **Protection that continues to apply after protections are removed**

This is circular reasoning and creates a dangerous gap in protection.

Challenge 2: Minimum disclosure requirements are insufficient

The proposed requirements (para 3.62) are:

- "Sufficient information" about protections being lost
- "Sufficient time" to consider
- "Clear and prominent warning"

These are subjective and unenforceable:

- What is "sufficient" information? Who decides?
- What is "sufficient" time? One day? One week?
- What is "clear and prominent"? Font size 12? Bold text?

Without specificity, these requirements are meaningless.

Challenge 3: No requirement to disclose financial implications

The proposals do not require disclosure of:

- Difference in fees/charges between retail and professional services
- Specific products client would gain access to
- Historical performance and risks of those products
- Adviser remuneration differences

Clients cannot make informed decisions without understanding the financial implications.

Challenge 4: No testing of understanding

Disclosure is not the same as understanding. The FCA does not require:

- Client to demonstrate comprehension
- Questions to test understanding
- Assessment of client's decision-making capacity

Challenge 5: Vulnerable clients

The proposals lack specific protections for vulnerable clients:

- Elderly investors may have diminishing capacity
- Clients with disabilities may need reasonable adjustments
- Clients in financial distress may make poor decisions under pressure

TTF Recommendation:

See recommendations in Question 9 response, particularly:

- Standardised disclosure template
- Minimum 30-day period
- Comprehension testing
- Independent advice requirement
- Vulnerable client protections

Question 11: Do you agree with our proposals to allow firms to initiate discussions with clients about opting out of retail permissions, where they have a reasonable basis for believing the client will meet the professional client threshold, and to the proposed conditions for such communications?

No. We strongly oppose firms initiating opt-out discussions.

This proposal fundamentally undermines the safeguard that clients must actively request professional status.

Issue 1: Creates pressure on clients

When a firm initiates discussion about opt-out:

- Client may feel pressure to agree
- Client may interpret as firm's recommendation
- Client may perceive refusal as insulting or limiting
- Power imbalance between firm and client

Issue 2: Enables systematic targeting

Firms will identify and target clients close to thresholds:

- Data analytics to identify candidates
- Systematic outreach campaigns
- Sales targets for categorisation
- Remuneration incentives for staff

This is not theoretical - we have seen this pattern in:

- PPI mis-selling (systematic targeting)
- Pension transfer mis-selling (targeting DB pension holders)
- FSAVC mis-selling (targeting pension scheme members)

Issue 3: "Incentivise, induce or pressure" prohibition is unenforceable

The FCA states (para 3.65) "Any practices intended to incentivise, mislead or put pressure on a client to opt out of retail protections are prohibited."

But how is "incentivise" defined?

- Is offering access to exclusive products an incentive?
- Is describing professional status as "premium" service an incentive?
- Is suggesting higher returns are possible an incentive?

How will the FCA enforce this prohibition?

- Will it review all client communications?
- Will it investigate individual complaints?
- What penalties for breach?

Without clear definition and robust enforcement, this prohibition is meaningless.

Issue 4: Information asymmetry

Firms have:

- Professional expertise
- Marketing skills
- Data on client psychology
- Financial incentive to reclassify

Clients have:

- Limited financial knowledge
- No obligation to accept
- But may not understand implications

Allowing firms to initiate puts clients at severe disadvantage.

Issue 5: Contradicts "client must request" safeguard

The current rule (COBS 3.5.3R(3)(a)) requires clients to request categorisation. This is a critical safeguard because:

- Clients who don't know they can opt out are precisely those who shouldn't
- Those with genuine need will find out and request
- Prevents firms systematically targeting and pressuring

The FCA's proposal eliminates this safeguard entirely.

TTF Recommendation:

Prohibit firm-initiated discussions entirely. Maintain the current requirement that the client must initiate.

If the FCA insists on allowing some firm initiation (which we oppose), then minimum safeguards must include:

1. **Strict limitations on initiation**:
   - Permitted only where client already qualifies under quantitative criteria
   - One contact only - no follow-up permitted
   - Must be in writing only (no calls, no face-to-face)
2. **Standardised communication**:
   - FCA-mandated template
   - Must include full disclosure of protections being lost
   - Equal prominence to benefits and risks
   - No marketing content
3. **Mandatory warnings**:
   - "This is not a recommendation"
   - "You should seek independent advice"
   - "Most clients do not need professional status"
   - "Professional status increases your investment risks"
4. **Prohibition on incentives**:
   - No mention of specific products
   - No suggestion of superior service
   - No fee benefits
   - No gifts or inducements
5. **Cooling-off period**:
   - Minimum 30 days between firm contact and any client response
   - Client must actively request, in writing
6. **Monitoring and reporting**:
   - Firms must report all initiations to FCA
   - FCA conducts thematic reviews
   - Public reporting on outcomes
7. **Ban for non-compliance**:
   - Firms found to have incentivised, pressured, or misled clients lose ability to initiate for 2 years

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Question 12: Will our proposals for change, taken together, allow firms to have appropriate engagement with clients about opting out, without communicating financial promotions about specific professional-only products before a firm has met the conditions for categorising a client as elective professional?

No. The proposals create significant loopholes.

Issue: Generic vs specific product information

The FCA states (para 3.65) "Any information on products which the firm anticipates will only be made available to professional clients must be exclusively generic materials."

But:

- What is "generic"? Product category? Asset class?
- How generic must it be to not count as promotion?
- Can firms say "We offer hedge funds to professional clients"?
- Can firms provide performance data for "the hedge fund sector"?

This will be gamed:

- Firms will prepare "generic" materials that are actually marketing
- Descriptions of product types that imply specific products
- Performance data for "similar products"

Issue: Timing of product access

Firms may:

- Discuss opt-out (permitted)
- Provide generic information about professional-only products (permitted)
- Client opts out
- Client immediately receives specific product promotions

This sequence is technically compliant but circumvents the protection.

Issue: "Reasonable basis to believe" is too vague

Firms can initiate if they have "reasonable basis to believe the client is likely to meet the conditions."

But:

- No definition of "reasonable basis"
- No requirement to document basis
- No consequence for incorrect belief

Firms will interpret this permissively.

TTF Recommendation:

1. **Prohibit all product information during opt-out discussions**:
    - No mention of specific product categories
    - No performance data
    - No discussion of what client could access
2. **Mandatory waiting period**:
    - 30 days after categorisation before professional-only products can be promoted
    - Allows client to reconsider
3. **Define "reasonable basis"**:
    - Client already meets quantitative criteria
    - Documented evidence of capability
    - Cannot be based solely on wealth
4. **Document retention**:
    - All communications during opt-out process retained for 6 years
    - Available to FCA and client on request

Question 13: Do you agree with our proposal not to require periodic reassessment of all elective professional clients, but to make clear [that] firms must reassess any client they should reasonably suspect no longer meets the conditions for the categorisation?

No. Annual reassessment must be mandatory.

The FCA proposes (para 3.68) that firms need not periodically reassess, but must reassess if they "should reasonably suspect" the client no longer qualifies.

This is wholly inadequate.

Issue 1: "Reasonably suspect" is unworkable

What triggers reasonable suspicion?

- Investment losses?
- Changed circumstances?
- Lack of trading activity?
- Client complaints?

Firms have no incentive to suspect. Indeed, they have strong incentive NOT to suspect because:

- Reassessment may result in reclassification as retail

- Retail classification means lower revenues, more compliance burden
- Professional clients generate more profit

Issue 2: Circumstances change

Over time:

- Clients age and capacity may diminish
- Market experience may become stale
- Financial circumstances may deteriorate
- Products may become more complex

Without periodic reassessment:

- Clients categorised 10 years ago remain professional
- Even if they've had no relevant activity
- Even if their capability has declined
- Even if they've suffered losses suggesting lack of capability

Issue 3: "No interaction for two years" is too long

The FCA suggests (para 3.68) two years of no interaction may trigger reassessment.

Two years is far too long:

- Client circumstances can change dramatically in two years
- Markets can change completely
- Products can evolve significantly

Issue 4: International standards require periodic review

Many jurisdictions require periodic reassessment:

- Singapore: Annual review
- Australia: Two-year maximum
- EU: Regular assessment

The UK should not have lower standards.

TTF Recommendation:

Mandatory annual reassessment of all elective professional clients:

1. **Annual review**:
    - Firms must contact each client annually
    - Request updated information on Relevant Factors

    - Conduct fresh assessment
2. **Reassessment triggers** (in addition to annual review):
    - Client requests reassessment
    - Significant investment losses (>25% portfolio)
    - Client complaints or disputes
    - No investment activity for 6 months
    - Change in circumstances (retirement, redundancy, divorce, bereavement)
3. **Simplified reassessment for stable clients**:
    - If client circumstances unchanged
    - If client confirms continued capability
    - If no adverse information
    - Streamlined process (but still documented)
4. **Right to opt back to retail**:
    - Client can request retail status at any time
    - Firm must action within 10 business days
    - No penalty or restriction for opting back
5. **Automatic reversion in case of inactivity**:
    - If client has no investment activity for 12 months
    - Firm loses contact with client for 12 months
    - Automatic reversion to retail status
6. **Enhanced reassessment for vulnerable clients**:
    - Clients over 70: Annual detailed reassessment
    - Clients with characteristics of vulnerability: Six-monthly check
    - Cognitive decline indicators: Immediate reassessment

Question 14: Taken together, do our proposals adequately balance protecting consumers from being inappropriately categorised, with reducing obstacles to clients accessing the products and services that meet their needs and risk profile?

No. The proposals are heavily skewed toward industry interests and fail to adequately protect consumers.

The FCA's framing is flawed. This is not a balance between:

- Consumer protection vs client choice

It is a balance between:

- Consumer protection vs firm profits

Clients who genuinely have the capability and need for professional status are not "obstructed" by robust categorisation processes. They can demonstrate capability and benefit from appropriate products.

What the FCA characterises as "obstacles" are actually **essential safeguards**:

- Quantitative criteria ensure minimum standards
- Qualitative assessment verifies capability
- Informed consent protects against pressure
- Periodic reassessment ensures ongoing appropriateness

The proposals remove safeguards and create risks:

Current Framework	FCA Proposal	Risk
Quantitative criteria required	Removed	Inconsistent, subjective assessments
Firms may not initiate	Firms can initiate	Pressure on clients, systematic targeting
Consumer Duty applies	Relies on Consumer Duty (which won't apply)	No protection post-categorisation
Defined thresholds	Subjective factors	Gaming and lowered standards
-	£10m wealth route with no capability assessment	Wealthy but inexperienced clients at risk

Who benefits from these changes?

1. **Firms benefit**:
    - More clients categorised as professional
    - Higher revenues from professional clients
    - Lower compliance costs
    - Fewer complaints (loss of Consumer Duty)
2. **Very wealthy, very sophisticated clients benefit**:
    - Easier access to professional products
    - Lower compliance friction
3. **Consumers at risk**:
    - "Nearly wealthy" clients (close to £10m threshold)
    - Clients with moderate experience but insufficient capability
    - Vulnerable clients who may be pressured

- Clients who over-estimate their capability

The proposals fail the balance test because:

1. **Asymmetric impact**: Small benefit to small number of sophisticated clients, significant risk to larger number of less sophisticated clients
2. **Irreversible harm**: Once miscategorised and invested in inappropriate products, losses may be unrecoverable
3. **No data on need**: FCA provides no evidence of significant numbers of genuinely sophisticated clients being unreasonably restricted
4. **Regulatory history**: Past "light touch" approaches led to catastrophic consumer harm

TTF Position:

The proposals do NOT adequately balance protection and access. They prioritise industry convenience over consumer safety.

TTF Recommendation:

To achieve genuine balance:

1. **Retain robust quantitative criteria** as minimum thresholds
2. **Require independent verification** of capability
3. **Prohibit firm initiation** of opt-out discussions
4. **Mandate annual reassessment**
5. **Raise wealth threshold to £25m minimum** for wealth-only route
6. **Conduct pilot programme** with enhanced monitoring before full rollout
7. **Require cost-benefit analysis** showing net benefit to consumers, not just firms

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Question 15: Do you agree with our proposed approach to rely on existing client safeguarding and governance rules (e.g. 'client's best interests' rule, fair clear and not misleading rules, SYSC rules and the Consumer Duty) rather than introduce additional new safeguards specifically for the elective professional categorisation process? Would the Consumer Duty be sufficient rather than any of our proposed new rules?

No. We strongly disagree. Existing rules are demonstrably insufficient, and the Consumer Duty will not apply post-categorisation.

This is perhaps the most concerning aspect of the entire consultation.

The FCA repeatedly suggests that Consumer Duty and other existing rules provide adequate safeguards. **This is fundamentally false.**

Issue 1: Consumer Duty does not apply to professional clients

The Consumer Duty (PRIN 2A) applies to **retail clients only**. PRIN 2A.1.1R states:

"(1) A firm must act to deliver good outcomes for retail customers."

Once a client is categorised as professional, **they are no longer a retail customer**. Therefore:

- Consumer Duty does not apply to them
- Outcome-focused obligations do not apply
- Firm's duty to act in client's best interests under Consumer Duty does not apply

The FCA cannot rely on Consumer Duty as a safeguard for a categorisation that removes Consumer Duty protection.

Issue 2: "Client's best interests" rule is weakly enforced

COBS 2.1.1R requires firms to "act honestly, fairly and professionally in accordance with the best interests of its client."

But:

- This rule is principle-based and subjective
- FCA has almost never taken enforcement action solely for breach
- No private right of action for clients
- Weak deterrent effect

Issue 3: "Fair, clear and not misleading" rule does not prevent categorisation harm

COBS 4.2.1R requires communications to be fair, clear and not misleading.

But this does not prevent:

- Inadequate assessment of client capability
- Pressure to opt out (if communications are technically compliant)
- Products being unsuitable for the client
- Excessive losses from inappropriate investments

Issue 4: SYSC rules are high-level and under-enforced

SYSC requires firms to have adequate systems and controls.

But:

- Rules are principle-based
- Interpretation varies widely between firms
- FCA supervision is light-touch
- Enforcement is rare

Issue 5: Historical evidence shows existing rules fail

We have decades of evidence that these rules do not prevent harm:

- LC&F: All these rules applied. 11,600 bondholders lost £237m
- Woodford: All these rules applied. Investors lost £3.7bn
- British Steel: All these rules applied. 7,700 people mis-sold
- Car finance: All these rules applied. Millions affected

In each case, the rules existed but did not prevent misconduct.

Issue 6: The FCA's own supervisory work shows non-compliance

The FCA's Dear CEO letters and thematic reviews (para 2.12-2.13) show:

- Weak assessment of knowledge and experience
- Inappropriate opt-outs
- Insufficient processes
- Misunderstanding of requirements

These breaches occurred **under existing rules**. Why would removing additional safeguards improve outcomes?

Issue 7: Answer to Question 15(b): No, Consumer Duty would not be sufficient

The FCA asks (para 3.70) "Would the Consumer Duty be sufficient rather than any of our proposed new rules?"

No. For reasons above, Consumer Duty:

1. Does not apply once client is professional
2. Does not specify categorisation standards
3. Does not require assessment methodology
4. Does not mandate verification or periodic review

TTF Position:

Existing rules are necessary but not sufficient. **Specific, prescriptive rules for elective professional categorisation are essential.**

TTF Recommendation:

The FCA must introduce strengthened rules specifically for categorisation:

1. **Prescriptive standards**: Not rely on principle-based rules
2. **Mandatory quantitative criteria**: Objective, verifiable thresholds
3. **Standardised assessment methodology**: Not left to firm discretion
4. **Independent verification**: External review of categorisation decisions
5. **Periodic reassessment**: Annual mandatory review
6. **Enhanced disclosure**: Standardised templates
7. **Cooling-off periods**: Time to reconsider
8. **Prohibition on firm initiation**: Client must actively request
9. **Right to opt back**: Simple process to return to retail status
10. **Supervisory monitoring**: Thematic reviews with public reporting
11. **Enforcement**: Meaningful penalties for mis-categorisation
12. **Private right of action**: Clients able to seek redress for inappropriate categorisation

These are not "gold-plating" or unnecessary burden. They are **essential consumer protections** that the FCA's own supervisory work shows are needed.

The FCA must not repeat the mistakes of the past by relying on principle-based rules that have consistently failed to prevent harm.

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5. Per Se Professional Categorisation

Question 16: Do you think that our proposals to remove the list of types of entities in COBS 3.5.2R(1) simplify the per se professional criteria?

Yes, this simplification is sensible, but the FCA must ensure it does not inadvertently expand or restrict scope.

We support removing the detailed list and replacing it with "any entity authorised or regulated in the UK or a third country to operate in the financial markets."

However, the FCA must:

1. **Publish guidance** on what "regulated to operate in the financial markets" means
2. **Monitor application** to ensure firms do not over-extend
3. **Maintain public register** of entities treated as per se professional

TTF Recommendation:

Proceed with simplification but:

- Publish detailed guidance
- Require firms to notify FCA of any novel per se categorisations
- Annual review to check for unintended scope changes

Question 17: Do you agree this category should include SPVs, and if so, do you agree with our proposed definition of an SPV for this purpose?

Yes, subject to appropriate definition and controls.

SPVs controlled by authorised firms and used solely for investment deployment can reasonably be treated as per se professional.

But safeguards needed:

1. **Clear definition**: SPV must be:
    - Wholly owned by authorised firm or its fund
    - Used solely for investment deployment
    - Subject to firm's governance and controls
    - Not used for retail client monies
2. **Not shell companies**: SPVs used for regulatory arbitrage or asset hiding should not qualify
3. **Transparency**: Register of SPVs treated as per se professional

TTF Recommendation:

Support with safeguards above.

Questions 18-20: Per se thresholds

We support harmonising MiFID and non-MiFID thresholds. This reduces complexity without reducing protection.

No objection to proposals.

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6. Policies, Procedures and Record Keeping

Question 21: Do you agree with our proposals to clarify the record keeping requirements for client categorisation?

Yes. Enhanced record keeping is essential.

The proposed clarification (para 3.91) that records must include:

- Information obtained from client
- Verification undertaken
- Firm's justification/reasoning

This is vital for:

- FCA supervision
- Quality assurance
- Client disputes
- Enforcement

However, we recommend further enhancement:

1. **Standardised documentation**: FCA-mandated templates
2. **Retention period**: 10 years (longer than standard 6 years given long-term nature of investments)
3. **Client access**: Clients can request copies of all categorisation documentation
4. **Audit trail**: Documentation must show:
    - Who made categorisation decision
    - When decision made
    - What information relied upon
    - Any conflicts of interest
5. **Periodic audit**: Firms must conduct annual internal audit of categorisation records
6. **FCA access**: Records available to FCA on request without notice

TTF Recommendation:

Support record keeping enhancement with additional requirements above.

Questions 22-23: Application and COBS 3.2.3R(4)

We support these clarifications. No objection.

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7. Interaction with Other Regimes

Question 24: How might the differences between our proposed changes to client categorisation and the other regimes affect you?

This is a critical issue that deserves more attention in the consultation.

The FCA notes (para 3.98-3.100) that client categorisation in COBS 3 is referenced in:

- Public Offers and Admissions to Trading Regulations (POATRs) - "qualified investor"
- AIFMD - "professional investor"
- PISCES - "qualifying individual"
- Financial Promotion Order (FPO)

Issue: Misalignment creates regulatory arbitrage

If COBS 3 definitions are weakened but other regimes maintain tighter definitions:

- Firms may rely on COBS 3 to avoid POATRs requirements
- Promotional material may target "COBS 3 professionals" who don't meet other definitions
- Regulatory gaps may emerge

Alternatively, if other regimes are aligned with weakened COBS 3:

- Consumer protection is reduced across all regimes
- Parliament's intent in setting standards in primary legislation is undermined

TTF Position:

Any changes to COBS 3 must be mirrored in other regimes, or vice versa. The FCA must work with HM Treasury to ensure consistency.

The FCA should not proceed with COBS 3 changes until other regimes are aligned.

TTF Recommendation:

1. **Delay implementation** until other regimes aligned
2. **HM Treasury consultation** on corresponding changes to primary legislation
3. **Impact assessment** of interactions between regimes
4. **Public consultation** on cross-regime implications

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8. Transitional Arrangements

Question 25: Do you agree that a one off re-categorisation of existing elective professional clients is the right way to ensure the integrity of the elective professional regime going forward and achieve our goal of resetting how firms differentiate between retail and professional clients?

Yes, re-categorisation is essential, but the proposed timeframe and approach are inadequate.

Issue 1: One year is too long

The FCA proposes (para 3.102) firms have one year to review existing clients.

But:

- Miscategorised clients remain at risk during this year
- Firms may use the full year even when earlier completion possible
- Harm may occur in interim period

Issue 2: No guidance on sequencing

Should firms:

- Review all clients before new rules apply?
- Review highest-risk clients first?
- Review as clients transact?

Without guidance, firms will take the easiest approach, not safest for consumers.

Issue 3: No independent verification

Firms will review their own categorisation decisions. This creates obvious conflict:

- Firms benefit from retaining professional classification
- No independent check
- Pressure to find clients still qualify

Issue 4: No consumer communication requirement

The FCA does not require firms to:

- Proactively inform all existing professional clients of review
- Explain what review entails
- Inform clients of outcome

- Explain right to request retail status

Issue 5: What happens to clients who no longer qualify?

If firm determines client no longer meets standards:

- Must they be reclassified as retail?
- Can the client request to remain professional?
- What happens to existing investments?

These questions are not addressed.

TTF Recommendation:

Enhanced transition requirements:

1. **Shorter timeframe**: 6 months, not 1 year
2. **Risk-based approach**: Highest-risk clients reviewed first:
    - Clients categorised under old quantitative test only
    - Clients with no recent activity
    - Elderly clients or those with characteristics of vulnerability
    - Clients with history of losses
3. **Mandatory client communication**:
    - All existing professional clients must be written to
    - Plain English explanation of review
    - Right to request retail status
    - Invitation to provide updated information
4. **Independent verification**: Sample of re-categorisations independently reviewed
5. **FCA reporting**: Firms report quarterly during transition on:
    - Number of clients reviewed
    - Number reclassified as retail
    - Number who chose to return to retail
    - Any issues identified
6. **Automatic reversion if not reviewed**: If firm fails to review client within 6 months, automatic reversion to retail status
7. **Clear rules on existing investments**:
    - If client reclassified as retail, existing investments remain but no new professional-only investments
    - Firm must advise on appropriateness of retaining existing investments
8. **No penalty for clients**: Clients reclassified as retail should not face:
    - Exit penalties on existing investments
    - Reduced service
    - Termination of relationship

9. **Public reporting**: FCA publishes aggregate data on transition outcomes
10. **Review extension**: If review identifies significant mis-categorisation, extend review to all clients ever categorised by that firm

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Question 26: If you are an authorised firm, do you anticipate our proposed changes could lead to you seeking to vary your part 4A permissions?

Not applicable to TTF.

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9. Conflicts of Interest - Rationalisation Proposals

Summary Position

We support rationalisation of SYSC 10 in principle, as reducing complexity without changing substance is beneficial.

However:

1. **Simplification must not obscure important distinctions**
2. **The FCA must strengthen guidance on when conflicts must be prevented vs managed**
3. **There must be enhanced accountability for conflicts failures**

Question 27: Do you agree with our proposed terminology changes? Do any of the proposed choices of terminology create any difficulties?

Generally yes, but some concerns.

The terminology harmonisation is sensible where terms are genuinely equivalent.

However:

Concern 1: "Material risk of damage" vs "risk of damage"

The FCA proposes (para 4.23) using "material risk" consistently.

We agree this is appropriate - conflicts should be recorded and managed where there is material risk of harm, not merely theoretical risk.

But the FCA must define "material":

- What level of harm?
- What probability?
- Objective or subjective assessment?

Concern 2: "All appropriate steps" vs "all reasonable steps"

The FCA proposes "all appropriate steps" (para 4.23).

But:

- "Appropriate" is more subjective than "reasonable"
- "Reasonable" has established legal meaning
- "Appropriate" may be interpreted more leniently

We prefer "all reasonable steps" or "all necessary steps" - clearer standards.

Concern 3: "Manage" vs "prevent or manage"

The FCA uses "prevent or manage" (para 4.23).

This is critical: some conflicts must be prevented, not merely managed.

The FCA must provide clear guidance on when prevention (not management) is required.

For example:

- **Must prevent**: Personal trading ahead of client orders, accepting conflicted payments, advising on proprietary products where more suitable alternatives exist
- **Can manage**: General conflicts of interest through disclosure, Chinese walls, oversight

Without this clarity, firms will choose "manage" over "prevent" in all cases.

TTF Recommendation:

1. **Define "material risk"**: FCA to publish guidance with examples
2. **Use "all necessary steps"**: Stronger than "appropriate"
3. **Publish guidance**: When conflicts must be prevented vs managed
4. **Hierarchy of responses**:
   - Prevent conflicts where possible
   - Manage conflicts where prevention not possible
   - Disclose conflicts that cannot be prevented or managed
   - Decline to act if conflicts cannot be adequately addressed

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Question 28: Do you agree with the proposed rationalisation of the conflicts of interest rules? Do our proposed changes make our rules on conflicts of interest easier to understand and navigate?

Yes, subject to concerns raised above.

Reducing duplication and complexity is beneficial. Firms operating across multiple business lines should benefit from a single set of rules.

However, the FCA must ensure:

1. **No loss of protection**: Rationalisation must not weaken any existing obligation
2. **Maintained distinctions where important**: Some differences between regimes may reflect important distinctions in types of conflict
3. **Enhanced guidance**: Simplifying rules must be accompanied by enhanced guidance on application
4. **Increased supervision**: The FCA must increase supervisory oversight to ensure simplified rules do not lead to reduced standards

TTF Recommendation:

Support rationalisation with the following enhancements:

1. **Thematic reviews**: Annual thematic reviews of conflicts management across sectors
2. **Best practice guidance**: Regular publication of examples of good and poor practice
3. **Enforcement**: Increased enforcement action for conflicts failures, including senior manager accountability
4. **Public reporting**: Annual publication of conflicts-related enforcement actions and themes identified
5. **Conflicts register**: Large firms to maintain and publish (redacted) registers of conflicts identified and how managed
6. **Training requirements**: Mandatory conflicts training for all staff involved in client-facing activities
7. **Testing**: Firms to test effectiveness of conflicts management through mystery shopping, audit, and client feedback

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Questions 29-30: Personal Account Dealing

We support the proposed amendments to COBS 11.7 to correct the technical issue.

We also support combining COBS 11.7 and 11.7A if this simplifies without changing substance.

No objection to proposals.

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10. Cost Benefit Analysis

Question 31: Do you have any comments on our CBA?

The CBA is fundamentally flawed and significantly understates costs and risks to consumers.

Issue 1: No quantification of consumer harm

The CBA (Annex 2) states:

"We anticipate the main benefit will be additional protections provided to clients who had previously been mis-categorised."

But:

- No attempt to quantify harm from mis-categorisation
- No analysis of number of clients likely to be mis-categorised under new rules
- No assessment of potential losses
- No consideration of redress costs

Issue 2: Asymmetric focus on firm costs vs consumer costs

The CBA extensively analyses:

- Implementation costs for firms
- Ongoing compliance costs for firms
- Time savings for firms

But minimal analysis of:

- Costs to consumers from inappropriate categorisation
- Losses from unsuitable investments
- Reduced protection
- Loss of redress rights

Issue 3: Breakeven analysis is inadequate

The CBA states (para 6):

"We conducted a breakeven analysis, which indicates that each firm will need to incur an annual monetary saving of £21,246 for the client categorisation rule changes to be net beneficial for them."

This focuses only on costs/benefits to **firms**, not consumers.

The relevant question is: **What are the costs and benefits to consumers?**

Issue 4: No analysis of risks

The CBA does not assess:

- Probability of consumer harm
- Magnitude of potential harm
- Distribution of harm across consumer groups
- Vulnerable consumers disproportionately affected

Issue 5: Inadequate alternatives analysis

The CBA does not consider alternative approaches that might achieve growth objectives with lower consumer risk:

- Higher wealth threshold
- Stronger qualitative requirements
- Independent verification
- Product-specific categorisation only

Issue 6: Monitoring and evaluation inadequate

The CBA states the FCA will monitor through "supervisory work" and "complaints."

But:

- No specific metrics defined
- No targets or thresholds for intervention
- No commitment to public reporting
- No independent evaluation

TTF Position:

The CBA fails to meet the requirements of s.138I FSMA because it does not adequately analyse costs to consumers.

TTF Recommendation:

The FCA must conduct a comprehensive consumer impact assessment before proceeding, including:

1. **Quantification of consumer harm risks**:
   - Model number of clients likely to be miscategorised
   - Estimate average losses from unsuitable investments
   - Calculate loss of redress value
   - Assess impact on vulnerable consumers
2. **Distribution analysis**:
   - Which consumer groups benefit vs at risk
   - Demographic impacts
   - Wealth distribution impacts
3. **Comparison with alternative approaches**:
   - Cost-benefit analysis of higher thresholds
   - Cost-benefit analysis of stronger safeguards
   - Identification of approaches that achieve growth with lower risk
4. **Monitoring and evaluation framework**:
   - Specific metrics to be tracked
   - Quantitative targets
   - Intervention triggers
   - Public reporting commitments
   - Independent evaluation at 1 year and 3 years
5. **Pilot programme**:
   - Test new rules with sample of firms
   - Enhanced monitoring
   - Evaluation before full rollout
   - Opportunity to refine based on evidence

We strongly urge the FCA not to proceed without addressing these deficiencies in the CBA.

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11. Missing from the Consultation: What the FCA Should Have Proposed

The consultation focuses on facilitating access for sophisticated investors. But there are significant issues with the current regime that are **not addressed**:

11.1 No Proposals to Strengthen Sanctions for Mis-Categorisation

The FCA identifies poor practices (para 2.10-2.13) but proposes no enhanced sanctions:

- No senior manager accountability
- No financial penalties
- No restriction of permissions
- No public censure

Without meaningful sanctions, poor practices will continue.

11.2 No Independent Verification

Firms assess their own clients. This is an obvious conflict of interest:

- Firm benefits from professional categorisation
- No independent check
- No consumer recourse

Independent verification should be required for all categorisations.

11.3 No Public Transparency

The FCA proposes no public reporting on:

- How many clients are categorised as professional
- Demographic breakdown
- Complaint rates
- Losses experienced
- Reclassification rates

Public transparency is essential for accountability.

11.4 No Consumer Education

Clients cannot make informed decisions without understanding:

- What professional status means
- What protections they lose
- What risks they face
- How to assess their own capability

The FCA should develop consumer education materials and require firms to provide them.

11.5 No Vulnerability Protections

The proposals do not address:

- Elderly clients who may have diminishing capacity

- Clients with disabilities who may need adjustments
- Clients in financial distress who may make poor decisions under pressure
- Clients with characteristics of vulnerability under FCA guidance

Enhanced protections for vulnerable clients are essential.

11.6 No Right to Redress for Inappropriate Categorisation

If a client is mis-categorised and suffers losses:

- No clear route to redress
- No compensation scheme
- Must rely on firm to voluntarily compensate or pursue legal action

There should be a clear right to redress with low-cost access through Financial Ombudsman.

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12. Recommendations Summary

Critical Recommendations (must be implemented)

1. **Raise wealth threshold to £25 million** for wealth-only route
2. **Retain quantitative criteria** as mandatory minimums alongside qualitative assessment
3. **Prohibit firm initiation** of opt-out discussions
4. **Require independent verification** of categorisation
5. **Mandate annual reassessment** of all elective professional clients
6. **Enhance informed consent** with standardised templates, comprehension testing, 30-day cooling off
7. **Conduct comprehensive consumer impact assessment** before proceeding

Important Recommendations (strongly advised)

8. Require product-specific categorisation (not blanket)
9. Establish meaningful sanctions for mis-categorisation
10. Publish annual transparency reports on categorisation practices
11. Develop consumer education materials
12. Enhanced protections for vulnerable clients
13. Clear right to redress for mis-categorisation
14. Pilot programme before full rollout

Process Recommendations

15. Extended consultation period (to allow proper consumer engagement)
16. Consumer testing of proposals
17. Engagement with consumer groups before finalising
18. Independent evaluation at 1 and 3 years post-implementation

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13. Conclusion

The Transparency Task Force cannot support these proposals as currently drafted.

While we recognise the FCA's objectives around growth and competitiveness, **these proposals prioritise industry interests over consumer protection in a way that is both dangerous and counterproductive**.

The FCA's approach reflects a fundamental misunderstanding:

Sustainable growth requires consumer trust.

The FCA's own data shows that **only 36% of the public believe financial firms are honest and transparent**. This trust deficit is the primary barrier to market participation.

Weakening consumer protections will:

- Increase consumer harm
- Erode trust further
- Reduce market participation
- Undermine the very growth the FCA seeks to promote

We have seen this pattern before:

- London Capital & Finance
- Woodford
- British Steel Pension Scheme
- Car finance scandal

In each case, prioritising growth over protection led to catastrophic outcomes.

The FCA must learn from these failures.

We urge the FCA to:

1. **Withdraw these proposals** and conduct comprehensive consumer impact assessment
2. **Re-consult with substantially strengthened safeguards**:
    - £25m minimum wealth threshold
    - Retained quantitative criteria
    - Independent verification
    - Annual reassessment
    - Prohibition on firm initiation
3. **Prioritise consumer protection** over industry lobbying
4. **Rebuild trust** through transparency and accountability
5. **Focus on enforcement** of existing rules before relaxing standards

The TTF stands ready to engage constructively with the FCA on these critical issues.

Consumer protection must come first; otherwise the ongoing erosion of trust in the sector and its regulatory framework will continue, thereby jeopardizing our country's prospects for economic growth.

For and on behalf of the Transparency Task Force

Andy Agathangelou FRSA

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