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# INSURANCE REGULATORY EBULLETIN

ROUND UP OF REGULATORY DEVELOPMENTS IN OCTOBER 2021



# WELCOME TO OUR INSURANCE REGULATORY EBULLETIN

Welcome to this edition of our Insurance Regulatory eBulletin, which aims to keep you updated with significant regulatory developments and their implications across the insurance sector.

Reflecting the current COP26 agenda, both the PRA and FCA have been issuing reports on their approaches to climate change going forward and the challenges for firms in meeting regulatory expectations. The FCA has also set out the risks and the related expectations of firms operating in the Lloyd's and London market.

Looking forward the latest edition of the Regulatory initiatives Grid sets out the regulatory agenda going forward. There is an increase in the number of initiatives driven by: the response to Government strategic reviews and to emerging themes and issues in financial services (such as climate and diversity & inclusion); plans for legislative changes to deliver the vision for the future of the UK financial services sector; and initiatives postponed by the response to COVID-19. Next month's bulletin will consider the initiatives relevant to general insurance in more detail.

This bulletin contains as much up to date regulatory news as we can gather. Inevitably, this may change as the current situation develops and we will aim to keep you informed in the future.

Please do not hesitate to contact myself or your usual BDO contact if you have any concerns over any matter highlighted in this update.

Say safe and stay well and I hope you enjoy reading this latest update.



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# PRUDENTIAL REGULATION

## ADAPTABILITY AND RESILIENCE IN THE MUTUALS SECTOR

On 4 October, Charlotte Gerken, PRA Executive Director - Insurance, [spoke](#) at the Association of Financial Mutuals Conference. She talked about what the review of Solvency II regulations will mean for the mutual sector and set out her views on three of the challenges the sector faces:

- ▶ technological change;
- ▶ diversity and inclusion in the financial sector; and
- ▶ climate change risk.

## SOLVENCY II GROUP SUPERVISION RULES RELATING TO US-PARENTED UNDERTAKINGS

On 15 October, the PRA published [an update](#) to the Modification by consent of the Solvency II Group Supervision with reference to US-parented undertakings.

The modification is open to PRA authorised insurance and reinsurance undertakings, where the parent undertaking is an insurance holding company or mixed financial holding company which has its head office located in the USA.

The UK / US Covered Agreement provisions became effective on 31 December 2020 and, therefore, the provisions on group supervision for US-parented groups are now fully applicable.

Under the Modification, the relevant insurance group undertaking, and UK insurance holding company will need to provide the PRA with a copy of their most recent Own Risk and Solvency Assessment (ORSA, or an equivalent group risk report) within one month of it being reported to a US supervisor.

The submission needs to include an insurance or reinsurance group's risk management framework description, assessment of the said group's risk exposure, and a group assessment of risk capital and a prospective solvency assessment.

Firms wishing to take advantage of this modification should contact the PRA's Waivers and Permissions Team.

## PRA CLIMATE CHANGE ADAPTATION REPORT

On 28 October, the PRA published its [Climate Change Adaptation Report 2021](#) which addresses climate-related financial risk management and the role of capital requirements.

The report sets out the response of the PRA to the risks posed by climate change to its policy and operations functions in two parts:

- ▶ Part A examines the risks posed by climate change to PRA regulated firms; the progress firms have made in their management of these risks; what the PRA's response to these risks has been; and the PRA's supervisory strategy from 2022.

During 2022, the PRA will switch its supervisory approach on its climate-related supervisory expectations from one of assessing implementation to actively supervising against the expectations. Where progress is insufficient and assurance or remediation is needed, the PRA will request clear plans and, where appropriate, consider exercise of its powers and use of its wider supervisory toolkit.

- ▶ Part B examines the relationship between climate change and the banking and insurance regulatory capital regimes; whether there are gaps that should be addressed; and the PRA's planned future work in this space.

Over the coming year, the PRA and the Bank will undertake further analysis to explore enhancements to the regulatory capital frameworks.

# CONDUCT REGULATION

## FCA REGULATION ROUND-UP

On 28 October, the FCA issued its Regulatory Round-up. The Hot topics were: the launch of the Joint Transformation Programme on collecting data from the UK financial services sector, and the key decisions package on the wind down of LIBOR as at December 2021. The items relevant to all sectors included Climate Change Adaptation Report \*, remote or hybrid working expectations for firms, the ending of the Temporary Transitional Period (TPP) in March 2022 and, the annual report on the regulatory perimeter \*.

The key items for the general insurance sector were:

- ▶ The 'Dear CEO letter' on FCA Supervision Strategy for Lloyd's & London Market Insurers and Others \*; and,
- ▶ Updates to the rules on General Insurance Pricing Practices Q&As to answer questions from firms on incentives and insurance distribution activities.

\* covered below.

## FCA SUPERVISION STRATEGY FOR LLOYD'S & LONDON MARKET INSURERS AND OTHERS

On 12 October, the FCA published a [Dear CEO letter](#) (dated 28 September) on its Supervision Strategy for Lloyd's & London Market Insurers and Others.

The key risks identified by the FCA in the letter were:

- ▶ Value of products - the continuation of consumers buying products which do not always offer fair value, for example, where there is a questionable product suitability demonstrated through low loss ratios.
- ▶ Claims outcomes - the examples noted were COVID-related business interruption claims and some undue barriers for customers or third-party claimants on civil claims of child sexual abuse.

- ▶ Operational resilience - particularly on the increased adoption of cloud technology as well as major digitalisation and re-platforming programmes. The risks identified included execution risk and concentration risk related to third-party suppliers.
- ▶ Uncertainty over insurance cover - arising from ambiguous contract terms or misaligned customer expectations, as evidenced by the COVID-related business interruption claims.
- ▶ Culture - where significant progress is being made but most efforts to date have focused on gender diversity, rather than wider diversity and inclusion issues.
- ▶ Access to certain business lines - arising from the hardening market related premium increases in lines such as Employers Liability, Professional Indemnity or building insurance and some customers being unable to find insurance that met their needs.

The FCA also set out their expectations of insurers in the above areas.

The other identified (and continuing) areas of FCA focus were governance and oversight, vulnerable customers and Brexit.

## FCA BOARD MINUTES: 3 SEPTEMBER 2021

On 15 October, the FCA published the [minutes](#) of the Board meeting, held on 3 September 2021. The meeting covered updates on the Future Regulatory Framework (FRF) and the Consumer and Markets Strategy Setting.

## PERIMETER REPORT 2020/21

On 21 October, the FCA published its [Perimeter Report](#) for 2020/21, This sets out what the regulatory perimeter is and how it applies. Since last year's report progress has been made on bringing funeral plans and unregulated 'buy now, pay later' provision ('Deferred Payment Credit') into FCA regulation.

In the report the FCA has called again for amendments to the Financial Promotions Order. It notes current exemptions to the order mean

ordinary investors are at risk of receiving financial promotions, including for high-risk products, that do not have to comply with the FCA's rules.

The FCA have also outlined other areas where legislative it believes change is needed such as extending the Senior Managers and Certification Regime to payment and e-money firms.

The report will be formally discussed with the Economic Secretary to the Treasury later in 2021. The minutes will be published to help provide transparency about the actions being taken on the perimeter.

### **GUIDES TO HELP EFFECTIVE MANAGEMENT OF CLIMATE-RELATED FINANCIAL RISKS**

On 21 October, the Climate Financial Risk Forum (CFRF) published its second set of guides to help the financial industry effectively manage climate-related financial risks. The new guides build on those published in July 2020 and should assist firms to respond effectively to climate-related financial risks.

The guides are intended to help retail banks, corporate banks, insurers and asset managers firms. They are deliberately aimed at enabling firms to overcome the significant challenges encountered in certain areas.

The five CFRF working groups collectively published deliverables as summarised as follows:

- ▶ Risk Management - the production and implementation of risk appetite statements that integrate climate-related financial risks. Additionally, there is a paper summarising a firm's training needs for climate risks and how they could be delivered coherently.
- ▶ Scenario Analysis - the provision of practical examples on how firms can incorporate sector specific points when developing an effective approach to scenario analysis. A publicly available online scenario analysis tool will be published in Q1 2022. The tool is designed for use by smaller firms who may not have the experience or resources to attempt this analysis independently.
- ▶ Disclosure- a number of case studies on disclosure from a variety of organisations to

help other firms develop their approach to climate-related disclosures. Guidance on the legal risks associated with publishing a climate-related disclosure and how these risks can be effectively managed has also been published.

- ▶ Innovation - the identification and sharing of practical opportunities to mobilise financial capital and steward an economy-wide transition to meet climate targets. This includes a set of 7 short films highlighting innovative approaches to mobilising finance in support of the transition to net-zero.
- ▶ Climate Data and Metrics - the report on climate data and metrics recommends five areas where climate-related metrics could be employed: Transition Risks; Physical Risks; Portfolio decarbonisation; Mobilising transition finance and Engagement.

The CFRF has been running since early 2019 and is chaired jointly by the PRA and the FCA, reflecting the importance of climate change to each of their respective strategic objectives.

### **COMPLAINTS DATA**

On 28 October, the FCA published [statistics](#) on the complaints received by firms between January and June 2021. The data is both firm specific and in aggregate.

A total of 2.04 million complaints were received by firms during the first half of 2021, a reduction of 7% from the number of complaints made in the previous six months, and the lowest level recorded since H2 2016.

The FCA also updated:

- ▶ the [webpage](#) providing a breakdown of the complaints upheld by product group and firm type;
- ▶ the [webpage](#) addressing the redress paid; and
- ▶ the [webpage](#) showing a breakdown of complaints opened.

### **FCA CLIMATE CHANGE ADAPTATION REPORT**

On 28 October, the FCA published its Climate Change Adaptation Report. The report sets out the actions the FCA and the financial services

industry have taken to adapt to the challenges of climate change. It is set within the context of the FCA's strategic approach to climate change, including the transition to net zero by 2050, and outlines:

- ▶ the FCA climate change and environmental, social and governance (ESG) strategy and how it is evolving;
- ▶ a timeline for major ESG publications between now and next summer;
- ▶ the climate-related risks that financial services firms are exposed to, including insurance underwriting risk, credit risk, financial market risk and operational risk;
- ▶ how firms are addressing and adapting to these climate-related risks and opportunities;
- ▶ how firms and listed companies are planning to transition to net zero; and
- ▶ the role of capital mobilisation in financing both climate change adaptation and climate change mitigation.

## EIOPA

We continue to monitor EIOPA's activity and draw your attention to it where we believe it to be necessary or helpful. This will, we hope, assist those firms continuing to operate in the EU.

The following items may be of interest to our readers.

### EIOPA COMMENTS ON SOLVENCY II PROPOSALS FROM THE EUROPEAN COMMISSION (EC)

On 1 October, EIOPA [welcomed](#) the EC's proposals arising from the Solvency II review. The proposals largely share EIOPA's approach and follow the objectives set out in EIOPA's December 2020 Opinion.

EIOPA welcomed the EC's proposal to develop an Insurance Recovery and Resolution Directive. However, EIOPA regretted that the minimum harmonisation of the Insurance Guarantee Schemes has not been considered in the proposals. EIOPA noted that under the current fragmented regimes, policyholders receive different levels of protection in the event of an insurer's failure. EIOPA believes this continued lack of a harmonised regime may undermine trust in the effectiveness of the Single Market.

### EUROPEAN INSURANCE OVERVIEW 2021

On 1 October, EIOPA published its 2021 [European Insurance Overview](#). The report is based on annually reported Solvency II information from solo (re)insurance firms at year-end 2020 and provides an easy-to-use and accessible overview of the European (re)insurance sector. The report includes data on UK undertakings.

For general (re)insurance firms the data shows:

- ▶ For the majority of countries there was an increase in total GWP. The Casualty & Property reinsurance lines of business had the highest increase. Median combined ratios greater than 100% was observed in Norway & Romania.
- ▶ Median SCR coverage is above 150% & median MCR coverage values above 200% throughout the EU.

- ▶ Government and corporate bonds together with collective investment schemes make up 74% of investment portfolios with equity investments making up a further 12%.

### EIOPA SETS FURTHER ASPECTS OF INSURERS' FAILURES AND NEAR MISSES

On 8 October, EIOPA published its [second report](#) on insurance failures and near misses. The report aims to enhance supervisory knowledge on the prevention and management of insurance failures. It is based on a sample of 219 affected insurance undertakings in 31 European countries, from 1999 to 2020.

The report aims to provide a better understanding of the actions that are taken by insurers and NCAs when firms are entering into the two specific stages of the crisis management flow:

- ▶ The recovery phase - measures taken before and after the breach of capital requirement; and,
- ▶ The resolution phase - actions taken by NCAs in charge of the resolution and/or liquidation process.

# ENFORCEMENT ACTION

## FCA REGULATORY FINES ROUND-UP

FCA regulatory fines in 2021 total [£238.3m](#). The following fines were announced by the FCA during October.

Omar Hussein	<p>The FCA has prohibited Omar Hussein, former director and senior financial adviser at pension switching firm Consumer Wealth Ltd (CWL), from working in financial services. Mr Hussein was also fined £116,000 for providing reckless and unsuitable pension switching advice. The FCA found that he advised customers to switch their existing pensions when this was often unnecessary and not in their best interest.</p> <p>Between 2015 and 2017, Mr Hussein and his firm advised 620 customers to switch their pension into a self-invested personal pension (SIPP) containing significant investments in ‘Portfolio 6’ (P6), an investment offered by Greyfriars Asset Management LLP (Greyfriars). His misconduct put at risk an estimated £13.5m of CWL customers’ retirement savings.</p> <p>P6 was a high-risk investment comprised of unregulated mini bonds relating to overseas investments in car parks, renewable energy and holiday resorts. The investments were illiquid in nature and highly likely to be unsuitable for the low net worth, financially inexperienced investors who were the firm’s target market. Several of the underlying mini bond investments in P6 subsequently failed and P6 was closed to new investment in 2016. Greyfriars went into administration in 2018.</p>
Credit Suisse International, Credit Suisse Securities (Europe) Ltd, and Credit Suisse AG	<p>The FCA has fined Credit Suisse £147 million for serious financial crime due diligence failings related to loans worth over US\$1.3 billion, which the bank arranged for the Republic of Mozambique. The loans, and a bond exchange, were tainted by corruption. Credit Suisse also agreed with the FCA to forgive US\$200 million of debt owed by the Republic of Mozambique.</p> <p>Between October 2012 and March 2016, Credit Suisse failed to properly manage the risk of financial crime within its emerging markets business. It was aware Mozambique was a jurisdiction where the risk of corruption of government officials was high and that the projects were not subject to public scrutiny or formal procurement processes. The contractor engaged by Mozambique on the projects was described as a “master of kickbacks”. The contractor secretly paid significant kickbacks, estimated at over US\$50 million, to members of Credit Suisse’s deal team, including two Managing Directors, in order to secure the loans at more favourable terms.</p> <p>While those Credit Suisse employees took steps to deliberately conceal the kickbacks, warning signs of potential corruption should have been clear to Credit Suisse’s control functions and senior committees. Time and again there was insufficient challenge within Credit Suisse, or scrutiny and inquiry in the face of important risk factors and warnings. The Republic of Mozambique has subsequently claimed that the minimum total of bribes paid in respect of the two loans is around US\$137 million.</p> <p>The FCA fine is part of a circa US\$475 million global resolution agreement involving the US Department of Justice, the US Securities and Exchange Commission, and the Swiss Financial Market Supervisory Authority.</p>

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