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INSURANCE REGULATORY EBULLETIN

ROUND UP OF REGULATORY DEVELOPMENTS IN
FEBRUARY 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.

I hope you and your families continue to be safe and well. The third lock down continues but the speed of the vaccine roll-out and the recent government road-map should allow us to return to 'normal' soon. The light at the end of the tunnel is definitely growing brighter.

A relatively quiet month on the regulatory front. The PRA is looking at the future of insurance prudential regulation and have published the themes arising from meetings with independent Non-Executive Directors. The FCA have continued to explore the themes of operational resilience, vulnerable customers and impacts from COVID-19 such as refunds for cancellations. They have also been looking at their future regulation of 'in-bound' international firms.

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 normal 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.



ALEX BARNES
PARTNER
Head of Insurance

+44 (0)20 7651 1213
alex.barnes@bdo.co.uk

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PRUDENTIAL REGULATION

LETTER PROVIDING FEEDBACK ON THE APPLICATION OF THE EFFECTIVE VALUE TEST

On 2 February, the PRA published [a letter](#) from Sid Malik, PRA Head of Division, Life insurance and pension risk to Chief Actuaries of insurance firms.

The letter contains feedback on the application of the Effective Value Test (EVT), which assesses the appropriateness of the matching adjustment (MA) benefit life insurers derive from restructured equity release mortgages (ERMs). The letter reminds firms to consider the following when conducting the EVT:

- ▶ the approach to decomposition of economic value is set out in Supervisory Statement 3/17 and should be followed;
- ▶ firms should not use the prudent assumptions under IFRS rules for the economic value calculation in the EVT; and
- ▶ expenses from underlying loans should be separated from expenses related to Special Purpose Vehicle structure.

These best practice recommendations need to be incorporated into EVT models as soon as possible and at the latest by 31 December 2021.

GOLDILOCKS AND THE THREE PILLARS: HOW MUCH CAPITAL IS JUST RIGHT? - SPEECH

On 10 February, the PRA published [a speech](#) made at the Westminster Business Forum by Anna Sweeney, PRA Executive Director, Insurance.

The speech explained the PRA's thinking on the relationship between capital requirements and the rest of the prudential regime, in the context of the government's review of Solvency II. She stated that the PRA is committed to upholding the principles of Solvency II.

She noted the PRA entered the review with no goal of either decreasing or increasing total capital in the sector and currently had not been presented with persuasive evidence that current capital levels are manifestly too high or too low.

She reminded that it is not all about capital requirements in isolation, but capital is part of a three pillar regulatory regime comprising capital, risk management, and disclosure.

She concluded the PRA do not believe that the balance between all three elements is badly wrong at the moment.

VIRTUAL MEETINGS BETWEEN THE PRA'S SENIOR ADVISORS AND INEDS

On 16 February, the PRA published [a letter](#) setting out the themes which emerged from discussions held in virtual meetings between the PRA's Senior Advisors and independent Non-Executive Directors (iNEDS). The meetings took place in October and November 2020, and provided an informal opportunity to discuss issues and risks that were on board agendas.

The letter sets out a summary of the key themes that were raised covering a number of areas. COVID-19 was a central topic in the discussions, but also for insurers the areas of:

- ▶ The effect of the economic downturn on business models - including profitability pressure, increased digital technology spend, asset quality issues, post-Brexit regulatory capital change, and the consequences of the FCA business interruption test case;
- ▶ Operational resilience in light of the new working environment - the increased pressures resulting from COVID-19, and effective second and third line of defence activity;
- ▶ Governance and people challenges - maintaining desired culture, second and third line virtual operating models, and staff wellbeing;
- ▶ Climate related financial risk - being prioritised in the current environment; and
- ▶ Feedback on the regulatory landscape.

LETTER FROM THE PRA AND FCA 'TRANSFORMING DATA COLLECTION' - AN UPDATE

On 23 February, the PRA and FCA published a [Dear CEO letter](#) updating firms on the work done to transform how the PRA and the FCA collect data. The letter reaffirmed the commitment to working in partnership with firms to tackle the collective challenges.

The Bank of England and the FCA have been working on projects looking at the future of data collection with a vision for creating cleaner and less burdensome processes which has raised key questions about challenges for regulators and firms and critical potential areas for reform.

These are identified as:

- ▶ Integrating reporting - to ensure value, reuse and efficiency.
- ▶ Modernising reporting instructions - to improve the ease of interpretation and implementation by firms.
- ▶ Defining and adopting common data standards - standardising how data is described, defined and sourced within firms.

The letter references the Bank's publication of [a plan for transforming data collection](#) from the UK financial sector which describes the work programme in more detail.

The letter notes that In late April, the Bank are running a Town Hall for firms that are dual-regulated, to discuss how progress will be made, and provide more detail about the resources required. Firms are encouraged to attend by contacting DataCollectionDP@bankofengland.co.uk to express an interest.

CONDUCT REGULATION

REGULATION ROUND-UP

On 18 February, the FCA published its monthly Regulation Round-up. The Hot Topics were a consultation on changes to the approach to regulating payments services and e-money firms and, and the Woolard review of change and innovation in the unsecured credit market.

The All Sector topics included: 2021/2022 fees and levies; Implementing Technology Change*; FSCS Annual Plan and Budget and Management Expenses Levy Limit consultation, and RegData registration.

The matters of interest for general insurance intermediaries and insurers reminders for both RegData registration and the submission of Directory Persons data by 31 March.

The remaining matter of interest covered was the launch by the British Insurance Brokers' Association (BIBA) of a [travel insurance directory](#) for people with serious pre-existing medical conditions. This directory meets the FCA's [Medical Cover Firm Directory](#) criteria and complements the existing Money and Pensions Service [travel insurance directory](#). All firms offering retail travel insurance must include details of at least one of the confirmed directories on their websites, in accordance with requirements in ICOBS 6A.4.3R. which comes into force on 26 April.

* covered below

FCA APPROACH TO INTERNATIONAL FIRMS - FS21/3

On 3 February, the FCA published [feedback](#) (FS21/3) to CP20/20 "Our Approach to International Firms". The aim of the consultation was to obtain views on how the FCA should assess international firms against the FCA minimum standards when applying for authorisation, during ongoing supervision, and the general expectations for these firms.

The feedback responds to the comments raised and clarifies where required and, also, explains

where the approach is amended following the consultation.

IMPLEMENTING TECHNOLOGY CHANGE

On 5 February, the FCA published the [findings of its review](#) on cross-Financial Services change management.

The review explored how financial firms manage technology change, the effect of change failures and the practices utilised within the industry to help reduce the impact of incidents resulting from change management.

The review identifies practices that contribute to change success, as well as identifying practices contributing to change failure. It highlighted the following drivers of project success:

- ▶ firms with well-established governance arrangements have a higher change success rate
- ▶ reliance on high levels of legacy systems is linked to more failed and emergency changes
- ▶ firms that allocated a higher proportion of their technology budget to change experienced fewer change related incidents;
- ▶ frequent releases and agile delivery can help firms to reduce the likelihood and impact of change related incident; and
- ▶ effective risk management is an important component of effective change management capabilities

Practices identified as contributing to change failure included:

- ▶ lack of complete visibility of third-party changes;
- ▶ change management processes being heavily reliant on manual review and actions;
- ▶ legacy technology impacting the ability to implement new technologies and innovative approaches; and
- ▶ major changes were twice as likely to result in an incident when compared with standard

changes which raised questions over the effectiveness of Change Advisory Boards.

MULTILATERAL MEMORANDUM OF UNDERSTANDING WITH EEA AUTHORITIES

On 10 February, FCA published a multilateral [memorandum of understanding](#) between each European Economic Area (EEA) Authority and the Bank of England and the FCA on supervisory cooperation and exchange of information.

FINANCIAL LIVES 2020 SURVEY: IMPACT OF COVID-19

On 11 February, the FCA published the key findings from the [FCA's Financial Lives 2020 survey](#) and an October 2020 COVID-19 panel survey. The report outlines the evolution of the market since the first Financial Lives survey in 2017 to early 2020 and investigates the impacts of the COVID-19 pandemic on the financial lives of UK adults.

The FCA note that many of the findings are worrying with an increase in vulnerable customers. The data collected will help shape what and how the FCA regulate.

GUIDANCE CONSULTATION: CANCELLATIONS AND REFUNDS

On 12 February, the FCA published a [consultation](#) on its current guidance about cancellations and refunds: helping consumers with rights and routes to refunds.

The guidance sets out the FCA's expectations for insurance providers and card providers to reduce consumer confusion and frustration and is effective until 2 April 2021. The FCA consultation was on extending the guidance beyond 2 April 2021.

Comments were to be submitted by 26 February 2021.

FINALISED GUIDANCE FOR FIRMS ON THE FAIR TREATMENT OF VULNERABLE CUSTOMERS - FS21/4 AND FG21/1

On 23 February, the FCA published [Finalised guidance](#) for firms on the fair treatment of vulnerable customers (FG21/1), which sets out the FCA's view on compliance by firms.

The FCA also published its [Feedback Statement \(FS21/4\)](#) which provides responses to the feedback received on its guidance consultation (GC20/3).

The objective of FG21/1 is to set out good outcomes for vulnerable customers under which firms should:

- ▶ understand the needs of their target market / customer base;
- ▶ ensure that firm employees have the right skills and capability to recognise and respond to vulnerable customer needs;
- ▶ respond to customer needs through product design, flexible customer service provisions and communications; and
- ▶ monitor and assess whether they are meeting and responding to the needs of customers with characteristics of vulnerability, and make improvements where this is not happening.

FG21/1 applies to all firms where the FCA Principles are applicable, regardless of sector. It applies to the supply of services and products to retail customers who are natural persons, even if the firm is not in a direct client relationship with the customer.

The FCA sets out which actions are required by Principle or rule, and also provides case studies of examples of bad and good practices.

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 under the new arrangements.

EIOPA RISK DASHBOARD

On 9 February, EIOPA published its [latest Risk Dashboard](#) based on the third quarter 2020 Solvency II data.

EIOPA note that Solvency Capital Requirements (SCR) ratio for insurance undertakings have slightly improved during the third quarter of 2020 whilst still being at lower levels than in the last quarter of 2019.

The Dashboard indicates insurers' exposures to macro risks decreased from very high to high, while all other risk categories remain at medium level.

Over the next 12 months, EEA supervisors are expecting an increase in credit, market and underwriting risks, reflecting concerns over the consequences of further lockdowns due to COVID-19 as well as the potential for 'cliff effects' once fiscal support measures cease.

DATA PROTECTION

DRAFT ADEQUACY DECISION FROM THE EUROPEAN COMMISSION

On 19 February, the ICO issued [a statement](#) in response to the European Commission (EC)'s publication of draft UK adequacy decisions. If adopted these decisions will allow for continued free flow of personal data from the EU into the UK.

As well as its decision under the General Data Protection Regulation (GDPR), the EU also published another draft decision for personal data related to law enforcement.

The adequacy decisions are now with the European Data Protection Board (EDPB) who will deliver an opinion to the European Commission and representatives from the EU member states.

During this process, UK businesses and public authorities will continue to be able to receive data from the EU under the adequacy bridge agreed in the 2020 trade and cooperation agreement.

ENFORCEMENT ACTION

FCA REGULATORY FINES ROUND-UP

No fines have been announced by the PRA or FCA in the first two months 2021.

FCA LAUNCHES HIGH COURT PROCEEDINGS AGAINST PAUL STEEL AND JACQUELINE FOSTER

On 9 February 2021 the FCA commenced civil proceedings in the High Court against Paul Steel and Jacqueline Foster. As part of those proceedings, an interim injunction has been secured which freezes the assets of Mr Steel and his partner, Ms Foster, up to the value of £7 million, pending a further hearing.

The FCA alleges that:

- ▶ Estate Matters Financial Limited (in liquidation) (EMF) contravened various requirements under the Financial Services and Markets Act 2000 by providing unsuitable defined benefit pension transfer advice, leading consumers to exit defined benefit pension schemes when it was not in their best interests to do so and that Mr Steel, who was EMF's director and co-owner, was knowingly concerned in those contraventions.
- ▶ Mr Steel breached FCA requirements by undertaking a course of conduct which resulted in the removal of EMF's assets, leaving it unable to meet potential liabilities for unsuitable advice, whilst enabling Mr Steel to retain the significant profits that accrued from the provision of that advice, and from ongoing fees.

An injunction was obtained against Ms Foster on the basis that she may be holding or controlling assets owned by Mr Steel.

ICO FINES

In February, the ICO fined a financial services firm as follows:

Valca Vehicle and Life Cover Agency Ltd (Valca0	A penalty of £80,000 because Valca did not have the necessary valid consent to send 95,004 unsolicited direct marketing messages between 15 June 2020 and 20 July 2020. Valca are a company specialising in lead generation for financial products operating as 'Debtquity' to generate leads for Individual Voluntary Agreements ("IVA's") and other debt management products. In sending the messages, Valca relied on consent obtained by another organisation for its own purposes, i.e., 'indirect consent' but the ICO found that such consent was not valid for Valca's purposes.
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CONTACTS

EXTERNAL AUDIT

ALEX BARNES

Partner & Head of Insurance
alex.barnes@bdo.co.uk

DAVID ROBERTS

Partner
david.roberts@bdo.co.uk

JOHN PERRY

Partner
john.perry@bdo.co.uk

TOM REED

Partner
tom.reed@bdo.co.uk

RUPERT LIVINGSTONE

Director
rupert.livingstone@bdo.co.uk

INTERNAL AUDIT

CHRIS BELLAIRS

Partner
christian.bellaairs@bdo.co.uk

SAM PATEL

Partner
sam.patel@bdo.co.uk

LUKE PATTERSON

Partner
luke.patterson@bdo.co.uk

REGULATORY ADVISORY

OMAR RIPON

Partner
omar.ripon@bdo.co.uk

RICHARD BARNWELL

Partner
richard.barnwell@bdo.co.uk

CHARLES PORTSMOUTH

Director
charles.portsmouth@bdo.co.uk

ACCOUNTING ADVISORY

MARK SPENCER

Director - Accounting Advisory Leader
mark.spencer@bdo.co.uk

ACTUARIAL

ROB MURRAY

Partner & Head of Actuarial
rob.murray@bdo.co.uk

SANTIAGO RESTREPO

Director
santiago.restrepo@bdo.co.uk

TAX

THOMAS TO

Partner
thomas.to@bdo.co.uk

CORPORATE FINANCE

ADAM WHISTANCE

Director & Head of Insurance M&A
adam.whistance@bdo.co.uk

OLADIPO OYE-SOMEFUN

Director
oladipo.oye-somefun@bdo.co.uk

FORENSICS

RICHARD CAMERON-WILLIAMS

Partner
richard.cameron-williams@bdo.co.uk

OUTSOURCING

ROBERT HUTCHINGS

Director
robert.hutchings@bdo.co.uk



FOR MORE INFORMATION:

ALEX BARNES

+44 (0)7903 891 435
alex.barnes@bdo.co.uk

CHARLES PORTSMOUTH

+44 (0)7584 470 039
charles.portsmouth@bdo.co.uk

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