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# INSURANCE REGULATORY EBULLETIN

ROUND UP OF REGULATORY DEVELOPMENTS IN  
SEPTEMBER 2020



# 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 light at the end of the tunnel as a result of the easing of the lockdown restrictions seems to have got more opaque and it will evidently be some time still before full normality returns. We continue to operate and serve our clients as a fully-remote, fully-connected workforce.

Whilst August proved to be very quiet month on the regulatory front, September has brought the regulators back to life reinvigorated by their break. COVID-19 issues continue to feed much of the regulatory announcements in Europe and of the PRA and FCA. We saw the outcome of the FCA test case on business interruption and as expected there are both negotiations with insurers and the possibility of further legal action. The regulatory output includes more preparations for Brexit and the FCA is consulting on potential new rules on the pricing of general insurance products.

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.



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# EIOPA

## REPORT ON RISKS AND VULNERABILITIES IN THE EU FINANCIAL SYSTEM

On 22 September, the European Banking Authority, EIOPA and European Securities and Markets Authority issued a joint [Risk Assessment Report](#) on the financial sector since the outbreak of the COVID-19 pandemic.

The Report highlights how valuation, liquidity, credit and solvency risks have increased across the sector. COVID-19 has led to profitability concerns and heightened liquidity challenges. The key issues identified are:

- ▶ possible further market corrections and deterioration in financial market liquidity;
- ▶ asset quality particularly in banking loan portfolios;
- ▶ the importance of the financial sector remaining well-capitalised;
- ▶ the consequences of a further prolonged low-interest rate environment and its risks;
- ▶ carefully managing IT and security risks, including when outsourcing such activity;
- ▶ ensuring firms are well-prepared for any disruption they or their clients may face at

the end of the UK's transition period the UK withdrawal from the EU.

## EIOPA SETS OUT ITS KEY PRIORITIES IN THE LIGHT OF THE PANDEMIC

On 30 September, EIOPA set out its [priorities](#) for 2021-2023 taking into account the current market situation in the light of COVID-19, as well as the political priorities defined by the EC. It is aimed at delivering EIOPA's four strategic objectives:

- ▶ conduct of business regulation and supervision to the benefit of consumers;
- ▶ supervisory convergence to ensure high-quality prudential supervision across Europe;
- ▶ Strengthening the financial stability of the insurance and occupational pensions sectors; and
- ▶ continuing to deliver the above effectively and efficiently and adapting to new priorities

The document also sets out its work plan for 2021.

# PRUDENTIAL REGULATION

## TEMPORARY PERMISSIONS REGIME - OPERATIONAL READINESS

On 1 September, the PRA wrote a [‘Dear CEO Letter’](#) to all PRA regulated firms reminding them of the operational preparations necessary for the end of the transition period on 31 December 2020.

At this point the Temporary Permissions Regime (TPR) will become immediately effective and firms that have submitted a valid Notification or Part 4A application will automatically enter the TPR. It is important that firms are prepared to enter the TPR and can meet the applicable regulatory requirements once in it.

The actions firms will need to take to ensure operational preparedness vary across firms, and the PRA have updated the information on EU Withdrawal on the PRA [website](#).

## HMT LAUNCHES REVIEW OF POOL REINSURANCE LIMITED

On 3 September, HM Treasury [launched](#) the latest five-yearly review of Pool Re, the terrorism reinsurer backed by the government.

The review aims to ensure the UK’s terrorism (re)insurance market continues to function efficiently and in the public interest and will set the strategic direction for Pool Re over the coming five years. It will also examine whether the current public private risk share remains appropriate and whether the scheme rules that govern Pool Re should be updated.

A call for evidence will be issued later this year and the review is scheduled to conclude in Spring 2021.

## RESPONSES TO CP3/20 ‘OCCASIONAL CONSULTATION PAPER’ - PS20/20

On 4 September, the PRA issued a [Policy Statement \(PS20/20\)](#) providing feedback to responses to Chapters 2 to 7 of Occasional Consultation Paper (CP3/20).

The key changes for insurers are covered below.

## SENIOR MANAGERS REGIME - APPLICATIONS AND NOTIFICATIONS

On 4 September, the PRA published an [update](#) to the PRA Rulebook applicable to all PRA regulated firms on Senior Managers Regime - Application and Notification Forms.

The revised documents come into force on 25 October 2020.

## NON-SOLVENCY II FIRMS: INSURANCE COMPANY - MATHEMATICAL RESERVES

On 2 September, the PRA published [amendments](#) to the Insurance Company - Mathematical Reserves part of its handbook. This updates the Rulebook on LIBOR updates for small insurers.

The amendments are effective from 8 September, 2020.

## SOLVENCY II: DATA COLLECTION OF MARKET RISK SENSITIVITIES - SS7/17

On 4 September, the PRA issued an updated [Supervisory Statement \(SS7/17\)](#) relating to its expectations on the reporting of sensitivities to a firm’s solvency position arising from various changes in market conditions.

The in scope firms are primarily Category 1 and 2 (re)insurers with material exposures to market risk. The information requested enables the PRA to understand how a firm’s financial situation, and through extrapolation that of the sector as a whole, might alter in a stressed scenario.

As well as using the template provided in Appendix 1 SS7/17, the PRA expects the format of the information to be consistent with Solvency II data reporting. The PRA also expects the information to be reported in XBRL through BEEDS portal. Instructions, technical artefacts and the template are included in the appendices.

SS7/17 is effective from 30 November 2020.

## MANAGING CLIMATE RISK IN THE INSURANCE SECTOR - SPEECH

On 9 September 2020, Anna Sweeney, PRA Executive Director - Insurance, delivered a

[speech](#) at the Moody's Insurance Summit Webinar: The resilience of Insurers in a Changing Climate.

Anna Sweeney looked at what climate change means for the insurance industry. She examined the risks insurers face and what they can do about them through three lenses:

- ▶ physical, transition and liability climate risks and the challenge facing the insurance industry;
- ▶ examples of good practice that the PRA has observed; and
- ▶ the Bank of England's strategy to help the insurance industry respond to the challenge.

She concluded by noting the insurance sector must continue to develop and enhance its approach, building on the early foundations of progress which demonstrated a commitment to mitigating the very worst impacts of climate change and that this work is far from complete.

#### REGULATORY INITIATIVES FORUM'S GRID

On 18 September 2020, jointly with the Bank of England, FCA, Competition & Markets Authority, Payment Systems Regulator, Information Commissioner's Office, Pensions Regulator, and HM Treasury the PRA published an updated version of the [Regulatory Initiatives Forum's grid](#) - a consolidated plan of initiatives that the authorities consider will, or may, have significant operational impact on firms across the next 24 months.

The grid is normally published twice per annum and this version updates the May 2020 issue.

#### UK WITHDRAWAL FROM THE EU: CHANGES BEFORE THE END OF THE TRANSITION PERIOD - CP13/20

On 22 September, the PRA published a [Consultation Paper \(CP13/20\)](#) on its proposals to fix deficiencies arising from UK's withdrawal from the EU and make consequential changes before the end of the transition period.

The CP also includes an update on the Bank of England's and PRA's intended use of the temporary transitional power provided for in the

Financial Services and Markets Act 2000 (Amendment) (UK Exit) Regulations 2019.

Comments should be submitted by 17 November 2020.

#### WHAT INSURERS CAN DO FOR THE ECONOMY - SPEECH

On 22 September, Anna Sweeney, PRA Executive Director - Insurance, delivered a [speech](#) at the Bank of America 25th European Financials CEO Conference.

She highlighted three things that insurers do for the wider economy:

- ▶ provide protection for significant financial losses particularly during the transition out of the current crisis and also in the longer term;
- ▶ channel investment into a wide range of assets to support economic recovery; and
- ▶ provide security of retirement income in the form of savings and annuities, facilitating stable demand for goods and services by remaining adequately capitalised.

#### STATEMENT ON KEY FINANCIAL WORKERS WHO ARE CRITICAL TO THE COVID-19 RESPONSE

On 24 September, the PRA published further [advice](#) on the steps financial firms should take on key financial workers who are critical to the COVID-19 response to reflect recent developments.

# CONDUCT REGULATION

## REGULATION ROUND-UP

On 17 September, the FCA published its monthly Regulation Round-up. The Hot Topics related to a Call for Input on the Consumer Investments Market, the new SM&CR annual reporting requirement, and LIBOR transition.

- ▶ Data provision under the Civil Liability Act 2018;
- ▶ FCA supervision strategy for personal and commercial lines insurance Intermediaries \*;
- ▶ Users joining the RegData familiarisation activity to provide feedback - RegData will replace Gabriel;
- ▶ Extension of financial crime reporting obligation set out in the August Consultation Paper; and
- ▶ The Open finance call for input submission deadline which closes on 1 October.

\* covered below

## FCA SUPERVISION OF PERSONAL AND COMMERCIAL LINES INSURANCE INTERMEDIARIES

On 4 September, the FCA issued a [Dear CEO Letter](#) to Personal and Commercial Lines Insurance Intermediaries setting out its view of the key risks they might pose to their consumers or markets.

The issues raised included:

- ▶ COVID-19, firm resilience and orderly wind-down;
- ▶ The key drivers of potential consumer harm including product governance and oversight, unhealthy incentive arrangements, issues in the insurance distribution chain; and
- ▶ Brexit preparedness.

Firms consider the extent of these risks in their business and assess if their strategies reduce the risks.

## FCA ANNUAL REPORT AND ACCOUNTS 2019/20

On 10 September, the FCA released its [Annual Report](#) and Accounts 2019/20, which looks at its key pieces of work throughout the year. The main highlights from the year discussed are:

- ▶ EU withdrawal and international engagement;
- ▶ responding to COVID-19 issues, and
- ▶ meeting its 7 key priorities throughout the year.

## FCA LETTER TO TSC REGARDING CP20/11: COMPLAINTS AGAINST THE REGULATORS

On 11 September, the FCA published a [letter](#) regarding FCA's consultation CP20/11: Complaints against the Regulators. After considering the large impact of the consultation and the need for timeliness and the proportionality of the measures, the FCA has decided to extend the period for responses to 12 October 2020.

## TRANSFORMING CULTURE WEBINAR: LEADING HEALTHY CULTURES IN A POST-COVID WORLD

On 11 September, the FCA broadcast a panel discussion exploring the role of leaders in driving healthy cultures in a post-COVID world.

Jonathan Davidson (Executive Director, Retail Supervision and Authorisations) was joined by guest panellists who discussed the impact of the last 6 months on organisational culture, and how leadership may need to evolve in a post-COVID world to sustain the positive changes seen. The panel also answered questions from viewers.

The webinar is available on the FCA's new [webinar portal](#) to view on-demand. If it is your first time using the portal you will need to create a user profile.

## RESULT OF FCA'S BUSINESS INTERRUPTION TEST CASE

On 15 September, the FCA issued a [press release](#) regarding the High Court's judgement in the FCA's business interruption insurance test case.

The release noted the Court found in favour of the arguments advanced by the FCA on the majority of the key issues. The judgement is a major step in resolving the uncertainty being faced by policyholders in the FCA's opinion.

On 25 September HM Treasury published a [letter to the Director General](#) of the Association of British Insurers (ABI) outlining its expectation that the value of government grant schemes intended to support businesses during the COVID-19 pandemic should not be deducted from business interruption insurance settlements. The Treasury encourages insurers who have not signed the original letter from the ABI, where this commitment was initially made to not make such deductions, to also commit to this.

On 30 September, the FCA [confirmed](#) that it filed a 'leapfrog' application to appeal to the Supreme Court on a precautionary basis in the event that agreement is not reached with the eight insurers and two intervenors that participated in the test case in the next few weeks. Discussions are being held on a range of issues whereby an appeal process would not be required, and payments would be made on eligible claims as soon as possible.

The FCA continues to believe that clarity was provided in the initial judgment of the High Court.

### **CORONAVIRUS (COVID-19): INFORMATION FOR FIRMS**

On 16 and 30 September, the FCA updated its COVID-19: Information for firms' [webpage](#). It announced proposals on:

- ▶ the next steps for consumers with overdrafts / consumer credit products; and,
- ▶ updates to the motor finance and high-cost credit agreements and credit cards (including store cards and catalogue credit), personal loans and overdrafts sections.

The FCA has also advised of further temporary measures for firms submitting regulatory returns. These measures apply to submissions that are due up to and including 30 September 2020.

All other returns must be submitted in the usual timeframe. For small or medium-sized

businesses, the FCA has advised that it will not charge the administrative fee for late returns until 30 September 2020.

### **REGULATORY PERSPECTIVE ON THE DRIVERS OF CULTURE AND THE ROLE OF PURPOSE AND GOVERNANCE - SPEECH**

On 17 September, Marc Teasdale, FCA Director of Wholesale Supervision - Supervision Investment, Wholesale & Specialists Division, [spoke](#) at The Investment Association, Culture in Investment Management Forum.

The speech addressed:

- ▶ the FCA's continuing work on governance and conflicts of interest;
- ▶ healthy cultures demonstrate strong governance that supports the daily delivery of the firm's essential purpose; and
- ▶ focusing on diversity and inclusion is essential both for strong governance, and to ensure that firms deliver on their purpose for all sections of society.

### **EVOLUTION OF A NEW MODEL FOR FINANCIAL REGULATION IN THE UK - SPEECH**

On 21 September, Christopher Woolard, FCA interim chief executive, delivered a [speech](#) at the 10th annual International Financial Services Forum.

Mr Woolard highlighted:

- ▶ COVID-19 is bringing the future forward and with accelerating consumer adoption of tech-enabled business models from shopping to banking;
- ▶ the economic impact of COVID-19 has underscored the need for change within the regulator to meet the challenge of supervising 60,000 firms by using the data it receives intelligently; and
- ▶ to do so effectively, the FCA must learn lessons from the past, but it needs to look to the future of regulation post Brexit as well.

### **GENERAL INSURANCE PRICING PRACTICES FINAL REPORT**

On 22 September, the FCA published its final report which sets out its proposed remedy

package and final findings of the general insurance pricing practices market study (MS18/1.3).

The FCA noted firms use complex techniques to identify consumers who are more likely to renew with them. Firms then increase prices to these customers at renewal each year, resulting in some consumers paying very high prices ('price-walking'). In addition, some firms use practices that can discourage consumers from shopping around, including by making it more difficult to cancel automatic renewal. And, firms do not always offer regular switchers their lowest prices.

As a result the FCA have released a [Consultation Paper \(CP20/19\)](#) on proposed changes to the FCA Handbook implementing a package of remedies to address the harms identified in the general insurance pricing practices market study.

The proposals include:

- ▶ a ban on price walking and not offering 'closed books' the same price as actively marketed new policies, anti-avoidance measures and Senior Manager attestation on pricing.
- ▶ Improving the current product governance rules by requiring manufacturers to consider if a product offers fair value to customers and for distributors to consider the impact their distribution strategy and process has on the value of the product.
- ▶ Requiring firms to provide consumers with a range of accessible and easy options to stop a policy from auto-renewing.
- ▶ Requiring firms to submit regular reports for retail home (home-only, contents-only and home and buildings) and motor insurance. Where firms sell additional products, including premium finance, alongside this insurance, the FCA propose to gather information about those products.

The FCA are not proposing to make any change to the current exclusion from PROD rules for products which are contracts of large risks and reinsurance.

Comments are requested by 25 January 2021.

## APPROACH TO INTERNATIONAL FIRMS - CP20/20

On 23 September, the FCA published a [Consultation Paper \(CP20/20\)](#) on its future approach to international firms providing or seeking to provide financial services that require authorisation in the UK. These include:

- ▶ EEA firms that have applied for authorisation in the UK, or intend to seek authorisation in the future; and
- ▶ international firms from non-EEA countries that have applied or intend to apply for authorisation in the UK, or are already authorised in the UK.

The CP aims to explain and collect feedback on how the FCA will evaluate these international firms against minimum standards when they apply for the authorisation and during ongoing supervision. This is particularly because of the anticipated increase in the number of international firms looking to be authorised in the UK.

All comments must be submitted by 27 November 2020.

## FCA PUBLISHES ANNUAL REPORT ON THE REGULATORY PERIMETER

On 29 September, the FCA published its second annual [Perimeter Report](#). The FCA perimeter determines which activities require authorisation and what level of protection consumers can expect for the financial services and products they purchase. The perimeter is decided by the Government and Parliament through legislation.

The report provides updates on the issues discussed last year including the issuing of a temporary product intervention in January to ban the mass-marketing of speculative illiquid debt securities and preference shares to retail investors for 12 months.

The report also identifies:

- ▶ where others, such as big tech firms like Google, can do more to protect consumers in areas on the edge of the perimeter; and
- ▶ areas where progress has been made or where there is continued harm to consumers

and market users around the perimeter, particularly in light of the coronavirus (COVID-19) pandemic.

# ENFORCEMENT ACTION

## FCA REGULATORY FINES ROUND-UP

FCA regulatory fines in 2020 total [£104.7m](#). No new fines have been announced by the PRA or FCA in the past month.

## FCA CENSURES FORMER WORLDSREADS CEO FOR MARKET MISCONDUCT

On 9 September, the FCA published a [Final Notice](#) in respect of Conor Foley, the former Chief Executive Officer of Worldspreads (WSL), publicly censuring him for market abuse and banning him from performing any roles linked to regulated activity.

The FCA published a Decision Notice on 3 July 2020 that also imposed a financial penalty of £658,900 on Mr Foley. Mr Foley has subsequently provided evidence of his serious financial hardship. Accordingly the FCA has imposed a public censure in lieu of the financial penalty.

The FCA fined and banned WSL's CFO, Niall O'Kelly, and its Financial Controller, Lukhvir Thind, in April 2017 for falsifying critical financial information concerning WSL's client liabilities and its cash position, which was passed to the company's auditors. By 31 March 2011, these misstatements amounted to £15.9 million.

## ICO FINES COMPANY FOR UNAUTHORISED PENSIONS COLD CALLS

On 10 September, the ICO imposed a fine of £130,000 on CPS Advisory Ltd after its investigation found that it had made 106,987 unauthorised direct marketing calls to people about their pensions between 11 January 2019 and 30 April 2019. This constituted a significant intrusion into the privacy of the recipients of such calls.

The law changed in 2019 to limit who can call people about their pensions such that companies can only make live calls to people about their occupational or personal pensions if:

- ▶ the caller is authorised by the FCA, or is the trustee or manager of an occupational or personal pension scheme; and
- ▶ the recipient of the call consents to calls, or has an existing relationship with the caller.

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