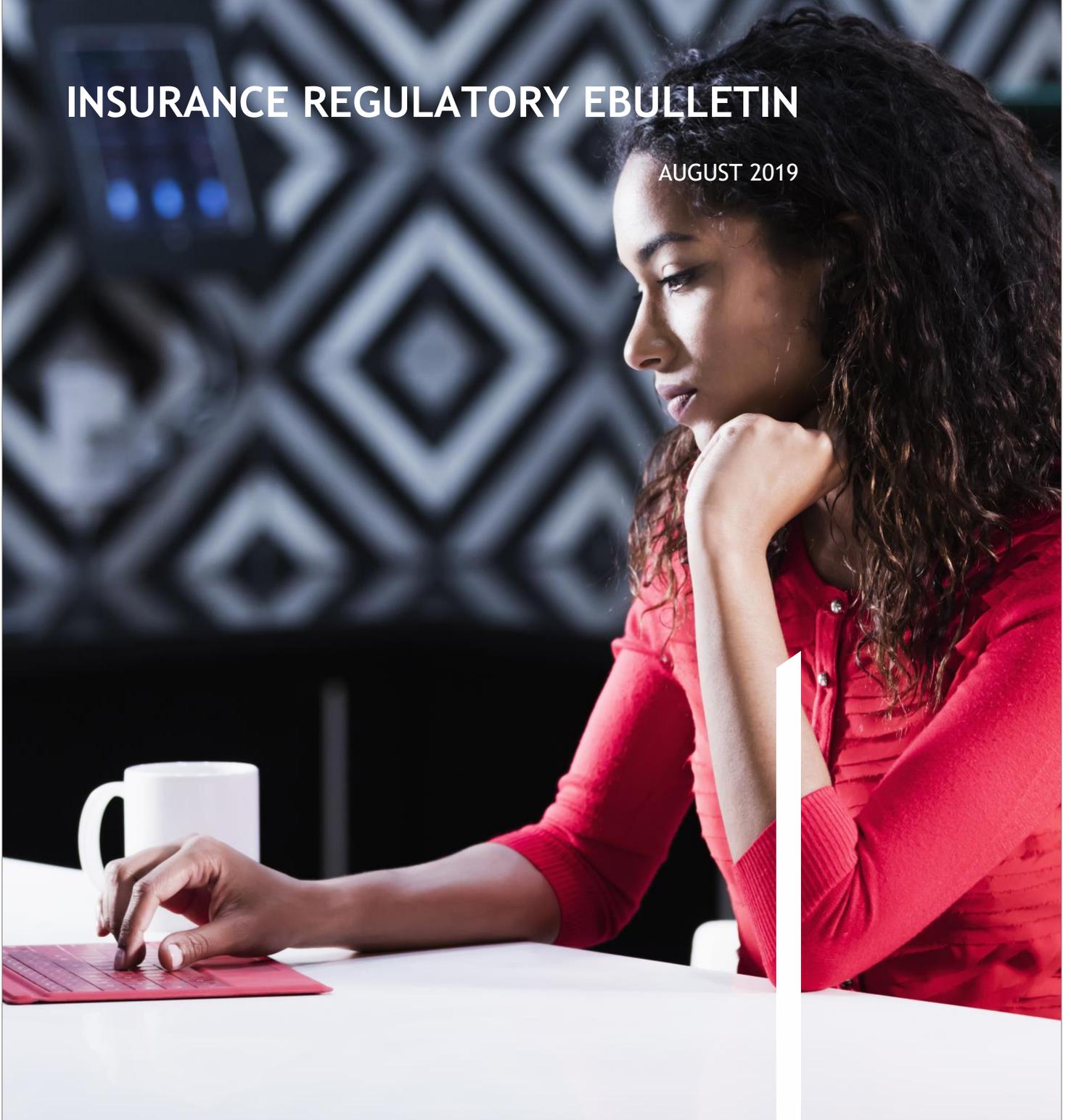




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INSURANCE REGULATORY EBULLETIN

AUGUST 2019



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.

A very quiet month on the regulatory front probably reflecting the time of the year! I hope that you and our regulators have been enjoying your summer break. EIOPA has published a consultation on its Solvency II remuneration principles and issued its latest Risk Dashboard. The PRA have released the results of their work on proxy modelling and the FCA have issued a reminder to insurers of the end of the transition period for the Senior Managers & Certification Regime together with some lessons for implementation arising out of its review of the regime in the banking sector.

I hope you enjoy reading this latest update. Please do not hesitate to contact myself or your normal BDO contact if you have any concerns over any matter highlighted in this update.



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EIOPA

CONSULTATION ON THE SUPERVISION OF REMUNERATION PRINCIPLES IN THE INSURANCE SECTOR

On 25 July, EIOPA launched a [consultation on the draft Opinion](#) on the supervision of remuneration principles in the insurance and reinsurance sector.

The remuneration principles set out in Article 275 of the Solvency II Delegated Regulation are high level and leave considerable discretion to (re)insurers and supervisory authorities and EIOPA has identified divergent practices have emerged across the EU.

Thus, the draft Opinion is addressed to national supervisory authorities and aims to enhance supervisory convergence by focussing on a set of remuneration principles. It provides guidance on how to challenge the application of the principles and focuses on a reduced scope of staff identified as potential higher profile risk-takers to promote a more proportionate approach. The draft Opinion also identifies benchmarks that should trigger the supervisory dialogue in implementing the remuneration principles.

Comments are requested by 30 September.

EIOPA RISK DASHBOARD - JULY 2019

On 26 July, EIOPA issued its updated [Risk Dashboard](#) for July 2019. EIOPA's key observations in the updated Risk Dashboard include:

- ▶ the risk exposure of the EU insurance sector overall remains stable;
- ▶ market risks remain at a high level due to a further decline in swap rates and lower returns on investments during 2018;
- ▶ the low interest rate environment continues to be a major concern for the sector;
- ▶ credit risks continue at medium level with broadly stable Credit Default Swap (CDS) spreads for government and corporate bonds; and
- ▶ there was an increase to profitability and solvency risks for life insurers at the end of 2018 caused by the lower return on investments.

Q&A ON REGULATIONS

On 23 July, EIOPA published [answers](#) on the templates for the submission of information to the supervisory authorities.

PRUDENTIAL REGULATION

THE PRA'S APPROACH TO ENFORCEMENT

On 31 July, the PRA published [a speech](#) given by Miles Bake, Head of the PRA's Legal, Enforcement & Litigation Division, at the Financial Services Lawyers Association in London on 16 July.

The speech set out the rationale for PRA enforcement, provided examples of enforcement in action as well as some key themes, and commented on the PRA's agenda. Since the PRA was formed in April 2013, it has opened 22 separate cases, involving opening investigations into 17 firms and 32 individuals. Eight of the investigations into firms are ongoing, as are 19 cases involving individuals. Two firm and seven individual cases closed with no enforcement action.

In conclusion he noted that the immediate priorities lean towards the operational: firstly, to ensure the PRA has the independent operational capability to pursue any cases it needs to; secondly, ensuring that from a public law standpoint subjects can expect the same treatment regardless of which of the decision-making bodies they deal with; and thirdly, continuing to foster understanding among firms and their legal advisers of the PRA's approach.

PROXY MODELLING SURVEY: BEST OBSERVED PRACTICE

On 1 August, the PRA published [a letter](#) from Sid Malik, Head of the Life Insurance and Pensions Risk Division of the PRA, addressed to Chief Risk Officers of life insurers. The letter sets out the results of the PRA's recent Proxy Modelling Survey.

The PRA has used the survey responses to determine what is considered to be 'best observed practice'. A wide range of practices were described in the survey responses and no firm was using best observed practice in all aspects of their proxy modelling. Whilst, the PRA recognises that proxy modelling is an area where thinking and techniques continue to evolve, it is considering whether to issue a consultation on proposed expectations for how firms can continue to meet internal model tests and standards with regards to proxy modelling.

Firms should consider the feedback set out in this letter and work with their supervision team to agree appropriate next steps.

CONDUCT REGULATION

REGULATION ROUND UP

On 15 August, the FCA published its monthly Regulation round-up. The Hot Topics included the FCA's guidance for firms on the fair treatment of vulnerable customers, an update on its work on pensions, the final rules for the Senior Managers & Certification Regime (SMCR) and the FCA and Practitioner Panel Survey results*.

This edition included the following articles that are relevant to insurers or insurance intermediaries:

- ▶ Fair pricing in financial services - published in July;
- ▶ Directory persons submission window which opens in September - Banks, building societies, credit unions and insurance companies must submit their data between 9 September and 9 March 2020 using Connect;
- ▶ SMCR transitional period - reminder for insurers*

* covered below

FCA AND PRACTITIONER PANEL PUBLISH FINDINGS FROM 2019 JOINT SURVEY

On 31 July, the FCA and the Practitioner Panel published [a report](#) on their 2019 joint survey of FCA-regulated firms. The survey gives views across the financial services sector of the FCA's performance as a regulator. The latest survey was conducted by Kantar Public on behalf of the FCA and the Panel. Fieldwork took place between January and March 2019. In total, 2,888 firms completed the survey; a response rate of 29%.

The survey revealed specific areas for improvement. In particular:

- ▶ **Information requests:** the need to ensure the costs of providing information imposed on firms are proportionate to the benefits achieved. There was a substantial increase in the proportion of fixed firms who said the number of information requests are greater than seems necessary. This is an issue both the Practitioner Panel and the Smaller Business Practitioner Panel have raised, highlighting both the volume of requests and these associated costs to firms.
- ▶ **Trust in supervision:** flexible firms have overall higher satisfaction scores than fixed firms, but they are less likely to agree that FCA staff have sufficient experience and are appropriately qualified. Since carrying out the survey, the FCA have clarified its approach to supervision and intends to evaluate the impact of this work and any changes to firm views in the next survey.

SMCR BANKING STOCKTAKE REPORT

On 5 August, the FCA published the [findings of its review](#) into the embedding of the Senior Managers and Certification Regime (SMCR) in the banking sector. The SMCR was introduced for deposit-taking firms and dual-regulated investment firms (the banking sector) in March 2016. The key element of the review was interviews with 45 individuals in firms and other bodies who have worked on implementing the SMCR.

The FCA found that the sector has made a concerted effort to implement the regime. Most firms are taking actions to move away from basic rules-based compliance towards embedding the regime in the organisation. Some of the key conclusions were:

Senior Manager accountability	<p>Senior managers across all firms were clear on what accountability means in the context of their jobs and day-to-day activities.</p> <p>Some non-executive directors were concerned the regime expected too much from the Board.</p> <p>Many senior managers expressed concern around understanding the meaning of ‘reasonable steps’ in the context of their business.</p>
Certification	<p>Firms have implemented processes to oversee the certification population. Frameworks are robust with several checks and balances in place to support the competence assessment and provision of training.</p> <p>Firms have broadened their approach to assessment of staff beyond solely technical skills, and managers are in a better position to assess the behaviours of their certified staff. However, most firms could not demonstrate the effectiveness of their assessment approach.</p>
Regulatory references	<p>All firms were positive about the concept of regulatory references and its intention to address the potential issue of ‘rolling bad apples’.</p>
Conduct Rules	<ul style="list-style-type: none"> ▶ Interviewees believed that staff generally understand the conduct rules. However, the evidence suggests that firms have not always sufficiently tailored their conduct rules training to staff’s job roles. ▶ Firms are often using their own values to articulate how they bring the conduct rules to life. However, there was insufficient evidence to be confident that firms have clearly mapped the conduct rules to their values. ▶ Many firms were often unable to explain what a conduct breach looked like in the context of their business.
Impact on culture	<ul style="list-style-type: none"> ▶ Many firms described a stronger tone and ownership from the top, noting that there was now a change in the level of detail, clarity and quality of conversations on culture and expected behaviours. ▶ Firms have found it challenging to find appropriate ways of measuring culture and the effort to do so is continuing.

The FCA is planning to increase its supervisory focus on the conduct rules and will continue to build on the links between the SMCR and firm culture.

FCA BOARD MINUTES: 27 JUNE 2019

On 8 August, the FCA published [the minutes](#) of the Board meeting held on 27 June 2019. The minutes note discussions on, inter alia:

- ▶ the report from the Chief Executive including an update on Woodford and mini-bonds;
- ▶ the Final Annual Report and Accounts 2018/2019;
- ▶ the FCA's response to the Complaints Commissioner's Annual Report; and
- ▶ Business Planning 2019/20 - impact of delayed Brexit on bids for funding the FCA's Data Strategy and Supervision investments.

SMCR TRANSITIONAL PERIOD - REMINDER FOR INSURERS

On 15 August, the FCA reminded insurers that the end of the one-year transitional period is approaching. By 10 December 2019, firms will need to have:

- ▶ completed the first annual fit and proper assessment of their Certification Staff, and issued certificates to staff as appropriate;
- ▶ trained all their remaining Conduct Rules staff in the Conduct Rules, including how they apply to them in their role;
- ▶ set up processes to ensure that any new staff from 10 December 2019 are trained in the Conduct Rules; and
- ▶ extended processes to record and report any conduct rule breaches linked to disciplinary action to cover the full Conduct Rules population.



ENFORCEMENT ACTION

FCA REGULATORY FINES ROUND-UP

FCA regulatory fines for 2019 now total [£350.6m](#). The following fines and related enforcement actions have been announced in the past month:

Cathay International Holding Limited and 2 of its directors	The FCA has published Final Notices concerning Cathay International Holdings Limited (Cathay) and 2 of its directors, Mr Jin-Yi Lee and Mr Eric Siu. The FCA considers that Cathay breached the FCA's Listing Principles and Disclosure Rules and Transparency Rules (DTR) and has imposed a fine of £411,000. In the FCA's view, Mr Lee was knowingly concerned in the company's breaches and so has been fined £214,300. The FCA also considers that Mr Siu was knowingly concerned in one of the company's breaches and so has been fined £40,200.
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The original Decision Notices were issued in June 2019 and related to the deterioration in Cathay's financial performance over the course of 2015 due to various issues in its group. In the FCA's view, there were serious procedures, systems and controls failings within the company which meant that Cathay did not monitor the full impact of these issues on its expected financial performance for the year ended 31 December 2015 compared to market expectations. As a result of these failings, the FCA also considers that Cathay recklessly failed to disclose to the market as soon as possible on or shortly after 6 December 2015 a material change in its actual and expected performance for the year ended 31 December 2015 compared to market expectations.

FCA PUBLICLY CENSURES ANDREW TINNEY, THE FORMER COO OF BARCLAYS WEALTH

On 16 August, following contested proceedings, the Upper Tribunal found that Andrew Tinney, the former Chief Operating Officer (COO) of Barclays Wealth and Investment Management (Barclays Wealth), breached his obligation as an approved person to act with integrity. The Upper Tribunal determined that the appropriate sanction was for the FCA to publish a statement of Mr Tinney's misconduct (a public censure) and it did not uphold the FCA's submission that a breach of the obligation to act with integrity by a senior manager merited a prohibition order in this case.

In March 2012, Mr Tinney received a document which contained critical findings about the culture within Barclays Wealth's US branch, Barclays Wealth Americas. Subsequently, the Chairman of Barclays Bank plc (of which Barclays Wealth is a division) received an anonymous email alleging that "a Wealth cultural audit report" had been suppressed. Mr Tinney assisted in drafting a response to this allegation.

Following the substantive hearing in January 2018, the Upper Tribunal found that Mr Tinney was reckless in giving the impression that the document did not exist. Accordingly, the Upper Tribunal found that Mr Tinney's conduct failed to meet the required standard of integrity. Other allegations were not upheld by the Upper Tribunal.

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