



# INSURANCE REGULATORY EBULLETIN

JULY 2019

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# 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 busy month on the regulatory front from both the European and UK regulatory perspective. EIOPA has issued a series of consultations related to the 2020 Solvency II review and in particular on Solvency II reporting and disclosure and IDD implementation and on cloud outsourcing. The PRA has been looking at Solvency II remuneration policy and has published its findings. The FCA has been following its TCF agenda in particular considering Intergenerational Differences, vulnerable customers and travel insurance customers with pre-existing medical conditions accessing suitable travel insurance. The use of AI and related digital ethics has been considered by EIOPA and the FCA. The UK has a new Prime Minister and the Bank of England and the PRA / FCA have been tidying up the Brexit planning. Time for a rest - so if you are going away enjoy your holidays.

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 GUIDELINES ON OUTSOURCING TO CLOUD SERVICE PROVIDERS

On 1 July, EIOPA launched a [consultation on guidelines](#) on outsourcing to cloud service providers. These guidelines provide guidance to market participants on how the outsourcing provisions set out in the Solvency II Directive and related Regulations and Guidance need to be applied in the case of outsourcing to cloud service providers.

The use of cloud outsourcing is a common practice for all financial services businesses not just (re)insurance undertakings and the main associated risks are similar across sectors. The proposed Guidelines are aimed at:

- ▶ Providing clarity and transparency to (re)insurance undertakings and avoiding the potential for regulatory arbitrage
- ▶ Fostering supervisory convergence in terms of the expectations and processes relating to cloud outsourcing.



The proposed Guidelines cover the following areas:

- ▶ Criteria to distinguish whether cloud services should be considered within the scope of outsourcing
- ▶ Principles and elements of governance of cloud outsourcing including documentation requirements and list of information part of the notification to supervisory authorities
- ▶ Pre-outsourcing analysis, including materiality assessment, risk assessment and due diligence on the service providers
- ▶ Contractual requirements
- ▶ Management of access and audit rights; security of data and systems; sub-outsourcing, monitoring and oversight of cloud outsourcing and exit strategies
- ▶ Principle based instructions for the national supervisory authorities on the supervision of cloud outsourcing arrangements including, where applicable, at group level.

The consultation is open until Monday, 30 September 2019.

## EIOPA FINANCIAL STABILITY REPORT JUNE 2019

On 1 July, EIOPA published its June 2019 [Financial Stability Report](#) on the European (re)insurance and occupational pensions sectors. The report notes:

- ▶ The risk of a prolonged low yield environment has increased, amid concerns over economic growth and growing trade tensions and political uncertainty, and thus remains a key challenge for the European insurance and pension fund sector
- ▶ The reinsurance sector has been resilient, despite the fact that in 2018 it suffered significant catastrophe losses. 2018 was the fourth most costly year in terms of costs of insured catastrophe losses
- ▶ Overall Solvency ratios of European insurers have slightly improved further in 2018 and remain high at around 200% and thus, the insurance sector remains adequately capitalised. However, profitability and solvency is still under pressure in the continuing low yield environment.

## EIOPA'S CONSULTATIVE EXPERT GROUP ON DIGITAL ETHICS IN INSURANCE

On 4 July, EIOPA issued a [call for candidates](#) to join a Consultative Expert Group on Digital Ethics in insurance. The members of the Consultative Expert Group are expected to be highly knowledgeable professionals with extensive practical experience in the areas of BDA (including AI and ML), data science, actuarial science, computer science, insurance law, digital ethics, data protection and/or consumer protection and working for the insurance industry, academia, consumer associations or other relevant stakeholders' organisations.

EIOPA recently published the key finding of its thematic review on the use of Big Data Analytics (BDA) in motor and health insurance, which revealed a strong trend towards data-driven business models across the insurance value chain. The thematic review highlighted how traditional data sources are increasingly combined - not replaced - with new sources, and that BDA tools such as Artificial Intelligence (AI) or Machine Learning (ML) are already actively used by 31% of the firms that participated in the survey.

The thematic review concluded that there are many opportunities arising from digitalisation, both for the insurance industry as well as for consumers. However, there are also risks that need to be further addressed. Some of these risks are not new, but their significance is amplified in the context of BDA. In particular regarding ethical issues with the fairness of the use of data and the accuracy and explicability of certain BDA tools such as AI or ML in insurance.

EIOPA believes the complex nature of some of these new technological developments and their potential deep societal impact coupled with the specificities of the insurance sector justifies the creation of a multidisciplinary Consultative Expert Group supporting EIOPA in the development of digital responsibility principles in insurance.

These principles will address the use of new business models, technologies and data sources in insurance. They may cover different areas of the insurance value chain, but there will be a specific focus on pricing and underwriting. Special consideration will also be given to the impact on certain groups of vulnerable consumers.

## REPORT ON CROSS-BORDER SUPERVISION OF RETAIL FINANCIAL SERVICES

On 9 July, the three European Supervisory Authorities (EBA, EIOPA and ESMA) published a [final report](#) on cross-border supervision of retail financial services. The report identified the main issues facing the National Competent Authorities (NCAs) provides an overview of the primary consumer protection and retail conduct business rules applicable to the cross-border provision of financial services, as well as analysing how those issues are addressed by current legislation.

The Report concludes with recommendations addressed to the European Commission, Council and Parliament, proposing to amend existing, or develop new, legislation to facilitate the deepening of the single market. The Report also lists recommendations addressed to NCAs aimed at enhancing cooperation amongst them.

### **CONSULTATION ON THE HARMONISATION OF NATIONAL INSURANCE GUARANTEE SCHEMES**

On 12 July, EIOPA issued a [consultation paper](#) on proposals for harmonisation of National Insurance Guarantee Schemes. The consultation paper is part of EIOPA's work on the 2020 Solvency II Review.

EIOPA sets out its view that every Member State should have a national guarantee scheme in place for the protection of policyholders in the event of a failure of an insurer, which should meet a minimum set of harmonised features. Therefore, EIOPA is calling for the establishment of a European network of national insurance guarantee schemes (IGS), which are sufficiently harmonised and adequately funded. The draft Advice addresses the following areas of an IGS:

- ▶ Role and functioning of an IGS
- ▶ Geographical coverage
- ▶ Eligible policies
- ▶ Eligible claimants
- ▶ Coverage level
- ▶ Funding
- ▶ Disclosure to policyholders
- ▶ Cross-border cooperation and coordination.

Responses should be submitted by 18 October 2019.

### **EIOPA CONSULTS ON INCREASED PROPORTIONALITY OF SUPERVISORY REPORTING AND DISCLOSURE**

On 12 July, EIOPA launched a [consultation package](#) on supervisory reporting and public disclosure in the context of its work on the 2020 Solvency II Review. EIOPA is consulting on the review of supervisory reporting and public disclosure in two waves.

This consultation is the first wave and responds to EIOPA being asked to assess:

- ▶ The appropriateness of the requirements related to reporting and disclosure in the light of supervisors and other stakeholders' experience
- ▶ The appropriateness and proportionality of the volume, frequency and deadlines of supervisory reporting and public disclosure
- ▶ The sufficiency of the existing exemption requirements to ensure proportionate application to small undertakings.

EIOPA's first wave of proposals include:

- ▶ Maintaining deadlines for quarterly reporting but extending the deadline for annual reporting by two weeks
- ▶ No change to Article 35 of the Solvency II Directive - thus, national competent authorities may exempt up to 20 % by market share

- ▶ Increased proportionality by dividing templates into two categories, core and non-core with risk-based thresholds different for annual or quarterly submissions. The risk-based threshold reflecting the nature, scale and complexity of the risk exposure of the area covered by the template
- ▶ Deletion and simplification of a number of Quarterly Reporting Templates (QRTs) both for quarterly and annual reporting
- ▶ Harmonisation of templates on cross-border information - e.g. one template enlarged to replace three current templates
- ▶ Creation of new templates to incorporate new information such as on cyber risks and product-by-product information for non-life business
- ▶ Revision of templates such as on the look through approach for collective investment funds and on variation analysis
- ▶ Solvency and Financial Condition Report (SFCR): One report with two addressees: an improved structure with dedicated sections for policyholders and the professional public
  - For the professional public SFCR element: the focus being more quantitative, and disclosed in a machine readable format with the structure streamlined to improve readability and comparability
  - In the policyholders SFCR element: only solo related information and only from insurance undertakings with external policyholders with the information provided in a simple language aimed at the policyholder
  - For pure captive undertakings, simplifications of annual reporting and partial exemption from the SFCR.

In addition, EIOPA proposes to introduce an external audit requirement of the SFCR - limited to the Solvency II Balance Sheet - in the Solvency II Directive.

The deadline for submission of feedback is Friday, 18 October 2019.

Later in 2019, EIOPA will launch a second consultation addressing:

- ▶ Group QRTs
- ▶ The Regular Supervisory Reporting (RSR)
- ▶ Technical aspects of the reporting and disclosure processes
- ▶ Data quality
- ▶ Reporting and disclosure linked to other areas of the 2020 Solvency II Review, in particular (but not necessarily only) the Long-Term Guarantee templates.



### **EIOPA DISCUSSION PAPER ON METHODOLOGICAL PRINCIPLES OF INSURANCE STRESS TESTING**

On 22 July, EIOPA published a [Discussion Paper](#) on Methodological Principles of Insurance Stress Testing, which is part of the broader process of enhancing EIOPA's stress testing framework.

The Discussion Paper sets out the methodology principles and guidelines required for the conduct and assessment of a EU-wide stress test exercise aimed at enhancing EIOPA's methodology for bottom-up supervisory stress testing. The proposed principles and guidelines will be the toolbox to facilitate both the design and execution phases of future EIOPA stress test exercises. In developing its proposed methodology, EIOPA addressed the following key elements:

- ▶ Stress test process and objectives
- ▶ Scope of stress tests
- ▶ Scenario design of a stress test
- ▶ Shocks and their application in a stress test
- ▶ Data collection and validation.

EIOPA is seeking feedback from stakeholders to be considered in the final Discussion Paper. Stakeholders are invited to submit feedback by Friday, 18 October 2019.

EIOPA is continuing its work on other stress testing related issues such as the assessment of liquidity positions under adverse scenarios, assessment of the vulnerabilities towards climate-related risks and potential approaches to multi-period stress tests.

### **EIOPA REPORTS ON NATIONAL 'GENERAL GOOD RULES' IN THE CONTEXT OF THE IDD**

On 22 July, EIOPA published [a Report](#) analysing national 'General Good rules' in the context of the proper functioning of the Insurance Distribution Directive (IDD) and the internal market. General good rules are provisions, which are part of the legal system of the host Member State. Neither the IDD, nor any other European legislation entail a precise definition of what the general good rules consist of but EIOPA analysed the general good provisions published by Member States which directly regulate the activity of "insurance distribution" such as conduct of business requirements. Other areas of law such as tax law and unfair competition law were excluded from the analysis.

The report provides:

- ▶ A factual description of the types of rules which are published on the websites of the national competent authorities (NCAs) and are applicable to insurance distribution activities, and
- ▶ A general assessment, facilitating the checking of main areas of divergence and impact of the general good provisions on the proper functioning of the IDD and the internal market more broadly.

EIOPA's main findings are:

- ▶ Of the 28 NCAs, which have implemented the IDD, EIOPA identified two where further steps are necessary to ensure the appropriate publication of the national general good rules
- ▶ Collectively, the quantity and level of diversity of information requirements contained in general good rules, present significant challenges for entities seeking to carry out cross-border business in terms of additional entry costs
- ▶ Some Member States have published general good rules on registration and organisational requirements, which allow the NCAs of the host Member States to impose additional requirements on incoming insurance distributors where within the IDD those rules are under the competence of the home Member State. This approach is seen as detrimental to the proper functioning of the IDD and the Single Market. The principle under the IDD is that the "single registration" in the home Member State triggers the provision of the European Union passport to the insurance distributor subject to the appropriate notification procedures.

To address the issues identified, EIOPA's follow-up actions include:

- ▶ Issuing recommendations on an individual basis to NCAs on how information on general good rules should be published to enable passporting insurance distributors to easily access and understand such information
- ▶ Consulting external stakeholders to collect feedback to findings and suggestions presented in the report and any general good provisions which are considered to be disproportionate for consumer protection and have an adverse impact on cross-border business activities
- ▶ Further analysis from a legal and supervisory perspective of the general good rules imposed on incoming insurance distributors in areas of the home Member State competence such as registration and organisational requirements.

### **EIOPA CONSULTS ON A DRAFT OPINION ON THE SUPERVISION OF INSURANCE SECTOR REMUNERATION PRINCIPLES**

On 25 July, EIOPA launched a [consultation on a draft Opinion](#) on the supervision of remuneration principles in the insurance and reinsurance sector. The remuneration principles as set out in Article 275 of the Solvency II Delegated Regulations are high level and leave considerable discretion to the undertakings and supervisory authorities and divergent practices have emerged across the EU.

EIOPA's role is to ensure an effective and consistent level of supervision to guarantee a similar level of protection for policyholders and beneficiaries at the European level. Its goal is to build a common supervisory culture through the convergence of national supervisory practice.

This draft Opinion is addressed to national supervisory authorities and is aimed at enhancing 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 proportionate approach. The Opinion also identifies benchmarks that should trigger the supervisory dialogue which should not be seen as hard targets for practical implementation of the principles.

The deadline for submission of feedback is Monday, 30 September 2019.



### Q&A ON REGULATIONS

On 4 July, EIOPA published a series of Q&A on:

- ▶ [EU 2015-35 supplementing Directive 2009-138](#) - the Solvency II Delegated Regulations
- ▶ [EU No 2009-138 Solvency II Directive](#)
- ▶ [Templates for the submission](#) of information to the supervisory authorities
- ▶ [Guidelines](#) on Health Catastrophe Risk Sub-Module
- ▶ [Guidelines](#) on basis risk
- ▶ [Other questions](#)

On 22 July, EIOPA published [further answers](#) on the templates for the submission of information to the supervisory authorities.

# PRUDENTIAL REGULATION

## REMUNERATION REQUIREMENTS - PRA FINDINGS AND EXPECTATIONS

On 12 July, the PRA published [a letter](#) sent to the Chairs of Remuneration Committees of PRA-regulated insurers. The letter clarifies the PRA's expectations of firms and the Chairs of the Remuneration Committee (RemCo) in relation to the implementation of the Solvency II Delegated Regulation remuneration requirements.

The letter highlights the importance of remuneration, noting that the remuneration policies and practices of firms drive decisions in underwriting, the behaviour of individuals as well as the culture of the organisation.

The PRA's analysis has concluded that there is a wide range of interpretations of the Solvency II remuneration requirements and that, while firms' implementation of the rules has improved over time, inconsistencies in their approaches to implementation remain apparent. This view is in line with the feedback received in meetings with RemCo Chairs which suggested an appetite for further clarification from the PRA to help to address the inconsistencies.

The letter covers:

<b>Material Risk Takers (MRTs)</b>	Appropriate and clear identification of MRT populations in insurance firms is a key consideration. The PRA analysis has found that firms' approaches towards determining Solvency II Staff vary widely. Some firms use a range of quantitative and qualitative criteria to capture a wide population of individuals who might affect risk outcomes. Others have adopted a narrow interpretation of the term and have not identified MRTs beyond the highest levels of management. The PRA note there are some areas, particularly in first line roles such as 'Head of Material Business Unit', 'Investment Management', and 'Underwriting and Pricing' where the PRA expected to see a higher proportion of MRTs due to the material impact these roles tend to have on a firm's risk profile.
<b>Variable remuneration</b>	The PRA have observed examples of where MRTs' remuneration packages have not taken adequate account of long-term performance. Variable remuneration remains a key area of interest for the PRA.
<b>Ex-post risk adjustment</b>	Risk adjustment is an important tool in allowing firms to hold individuals accountable for poor risk decisions and can help set the tone for the desired behaviours of MRTs. The PRA expects firms' remuneration arrangements to be able to permit a reduction in the value of variable remuneration where appropriate. This might be used, for example, where decisions have had a material negative impact on the firm's performance. Firms should be able to provide us with evidence of how risk adjustment has been considered or used in practice.
<b>Role of the RemCo</b>	The PRA analysis identified differences across firms over the design, roles, and responsibilities of RemCos. Some committees focus largely on senior management remuneration, while others take a more granular, firm-wide approach. The Solvency II Directive requires that the remuneration policy applies to the firm as a whole, and while it is for the board to consider the responsibilities of its committees, specific consideration should be given to the areas that the RemCo does and does not cover. The board should be comfortable that appropriate governance and consideration is given to these issues in other forums.

## MEMORANDUM OF UNDERSTANDING: BETWEEN THE FINANCIAL CONDUCT AUTHORITY AND THE BANK OF ENGLAND

On 18 July the PRA and the FCA published an updated [Memorandum of Understanding \(MoU\)](#) between the FCA and Bank of England (Bank) (exercising its prudential regulation functions through the PRA).

The MoU, initially published in April 2013, sets out the high-level framework the PRA and the FCA use to co-ordinate and co-operate in carrying out their respective responsibilities was updated to reflect the expansion of the regulators' remit, and organisational changes since the MoU was first signed in 2013. As part of this update, the title of the MoU was also changed to reflect the PRA becoming fully integrated into the Bank, following its de-subsidisation in March 2017.

## SOLVENCY II: GROUP AVAILABILITY OF SUBORDINATED LIABILITIES AND PREFERENCE SHARES - CP16/19

On 22 July, the PRA published a [Consultation Paper](#) proposing amendments to its Supervisory Statement (SS) 9/15 'Solvency II: Group supervision', which sets out its approach to the determination of the availability of subordinated liabilities and preference shares in group own funds, as well as its expectations of firms in providing relevant analysis.

The proposals aim to clarify the PRA's expectations of insurance firms that are subject to group supervision under the Solvency II Directive when firms are seeking to demonstrate that the assumption of Solvency II that subordinated liabilities and preference shares are not available to cover losses elsewhere in the group is inappropriate in a firm's specific case.

Comments should be submitted by 21 October 2019.

## INSURANCE SPECIAL PURPOSE VEHICLES (ISPV)

On 22 July, the PRA updated the [Insurance special purpose vehicles \(ISPV\)](#) webpage to include updated application forms, accompanying notes, and a new set of FAQs.

## UK WITHDRAWAL FROM THE EU: CHANGES FOLLOWING EXTENSION OF ARTICLE 50 - CP18/19

On 25 July the Bank of England and the PRA published a further [Consultation Paper](#) (CP18/19) following the extension of the Article 50 period announced on Wednesday 10 April 2019, and the consequent change of 'exit day' in the Act to Thursday 31 October 2019 at 11pm. Some minor amendments are needed to the Bank's and PRA's EU Exit Instruments. There are also additional provisions in EU law that apply before Thursday, 31 October 2019. These provisions will now meet the definition of retained EU law and thus require amending.

The Consultation Paper (CP) contains:

- ▶ Section A: an update on the Bank's and PRA's intended use of the temporary transitional power provided for in the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (FSMA SI). Section A is split into two parts:
  - Part 1 sets out the PRA's proposals in relation to the PRA Rulebook and BTS within the PRA's remit that will be retained, or 'onshored', in UK law
  - Part 2 sets out proposals by the Bank, as FMI competent authority in relation to BTS under the Central Securities Depositories Regulation (CSDR)

- ▶ Section B: Bank and PRA consultation with proposals to fix deficiencies arising from the UK's withdrawal from the EU and make consequential changes in light of the extension to the Article 50 period.

The CP is relevant to all firms authorised and regulated by the PRA, including those that expect to have a deemed permission under the 'temporary permissions regime' (TPR) or Financial Services Contracts Regime (FSCR), or that seek to apply for PRA authorisation in the future.

The consultation closes on Wednesday 18 September 2019.

# CORPORATE GOVERNANCE

## PRINCIPLES AND GUIDANCE FOR BOARD RISK COMMITTEES AND RISK FUNCTIONS IN THE UK FINANCIAL SERVICES SECTOR

On 12 July, the FRC announced that the Risk Coalition had issued [a consultation](#) on the Principles and guidance for board risk committees and risk functions in the UK financial services sector. The Risk Coalition has written this guidance to meet the need for coherent, principles-based good practice guidance for board risk committees and risk functions. In essence, the guidance provides a commonly agreed benchmark for ‘what good looks like’ - something that has not been available previously.

This guidance sets out to:

- ▶ Develop a common understanding of the purpose and remit of board risk committees and risk functions
- ▶ Raise expectations and promote good practice of risk oversight in UK financial services
- ▶ Provide a benchmark against which board risk committees and risk functions can be objectively assessed.

The guidance is not prescriptive but provides users with good practice principles supplemented with practical guidance on their implementation. The guidance does not reference specific types of risk as these will be different for every organisation, preferring, instead, to focus on good practice principles that will stand the test of time.

It is probably of value for all Risk Committee members, CROs, and Internal Auditors reading and responding to the consultation as its existence will mean the PRA and FCA will have benchmark expectations for regulated firms.

This consultation closes on 20 September 2019, but responses are requested earlier, if possible.

## AFR SLIDES FOR NED FEEDBACK 2019

On 16 July, the FRC published a [set of slides](#) from its Actuarial Function Reporting Roundtable feedback seminar for NEDs entitled ‘The Good, the Bad and the Ugly.’

The seminar provided an overview of the work of the Joint Forum on Actuarial Regulation, the importance of the Actuarial Function Roundtables and the challenges around Actuarial Function Reports in practice.

# CONDUCT REGULATION

## REGULATION ROUND UP

On 18 July, the FCA published its monthly Regulation round-up. The Hot Topics included the FCA's intention to create a new platform to replace Gabriel and improve the way data is collected from firms\*, highlights from the FCA Intergenerational Difference Conference\*, and the FCA's Annual Report and Accounts 2018/19\*.

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

- ▶ Unfair terms - latest undertaking published under the Consumer Rights Act 2015 (CRA)\*
- ▶ Employers' Liability Insurance Tracing (ICOBS 8.4)\*
- ▶ Signposting to travel insurance for consumers with medical conditions Consultation\*

\* covered below



## UNFAIR TERMS - ETA SERVICES UNDERTAKING PUBLISHED UNDER THE CONSUMER RIGHTS ACT 2015

On 26 June, the FCA published [an undertaking](#) from ETA Services Ltd about an unclear term in its Cycle Insurance Policy. The FCA had concerns that an exclusion term was not sufficiently transparent because it contradicted another term. As a result, consumers may have been confused about whether the policy covered them and whether they could make a claim.

The FCA reminds firms to ensure their contracts comply with the fairness and transparency requirements under the CRA and the Unfair Terms in Consumer Contracts Regulations.

## FCA REGULATED FEES AND LEVIES 2019/20: INCLUDING FEEDBACK ON CP19/16 AND 'MADE RULES' - PS19/19

On 1 July, the FCA published a [Policy Statement PS 19/19](#) setting out its periodic regulatory fees and levies for 2019/20 for the FCA, the Financial Ombudsman Service general levy, the Money and Pensions Service (formerly the Single Financial Guidance Body), Devolved Authorities, and the illegal money lending levy.

The FCA also published feedback received on its consultation paper CP19/16 "FCA Regulated fees and levies: Rates proposals 2019/20". The feedback recognised the FCA's efforts to keep its base budget flat in real terms and how this influences the FCA's decision to cut costs.

## FCA CONFERENCE ON INTERGENERATIONAL DIFFERENCES

On 2 July, the FCA's Intergenerational Differences conference gave space for the industry, think tanks, government, regulators and academia to discuss the emerging generational financial needs and issues outlined in the FCA's [Intergenerational Differences Discussion Paper](#) issued in May.

In his opening speech to the conference Andrew Bailey, Chief Executive of the FCA, highlighted;

- ▶ The most important issue that the FCA faces in the long-run are the forces shaping the inter-generational issues
- ▶ Financial services need to evolve to meet these changing and sometimes diverging generational needs
- ▶ Addressing challenges from intergenerational change requires effort from across society: 'this is not a cause that the FCA can fight alone'.

During the conference the FCA:

- ▶ Outlined their understanding of the issues different generations face
- ▶ Brought together stakeholders to pinpoint issues that need a response
- ▶ Identified specific action the FCA can take to help the market meet these changing consumer needs.

Key highlights from the conference included two workshops:

- ▶ Delegates discussed market-led and regulatory solutions to meet the challenging needs of individuals based on real-life case-studies
- ▶ A panel discussion on next steps for the FCA and the industry to address these emerging challenges.

The FCA are seeking feedback on the Discussion Paper before 1 August 2019

## EMPLOYERS' LIABILITY INSURANCE TRACING

The FCA has reminded firms that the timelines and method for insurance firms to submit their directors' certificate and auditors' reports (Employers' Liability Register (ELR) compliance return) to the FCA have changed this year.

Following the FCA's [Handbook Notice](#) in September 2018, firms must submit the ELR return via an online form between 1 August and 31 August each year, starting in 2019.

Firms submitting their return after this date will be charged a £250 late administration fee. Full details on how to access the online form are on the FCA [website](#).

## FCA ANNUAL REPORT AND ACCOUNTS 2018/19

On 9 July, the FCA published its [Annual Report and Accounts 2018/19](#), which looks back on its key pieces of work throughout the year. The highlighted for 2018/19 include:

- ▶ actions to enhance protection of high-cost credit customers,
- ▶ implementing the necessary changes in preparation for Brexit,
- ▶ assisting customers in taking action on Payment Protection Insurance (PPI) and
- ▶ strengthening the operational resilience of companies as well as promote global financial innovation.

The Annual Report includes the FCA's gender pay gap for the year ending 31 March 2019, which is 20.6% (median) and 17.8% (mean). In addition, the report includes the FCA's ethnicity pay gap, which has been published for the first time and is 28.7% (median) and 27.2% (mean).

## SENIOR MANAGERS AND CERTIFICATION REGIME: FINALISING FCA RULES

On 10 July, the FCA [announced](#) that it has been working closely with HM Treasury on preparing the Commencement Order required to enable the FCA to publish final rules on the extension of the Senior Managers and Certification Regime (SMCR). The SMCR will be extended to FCA solo-regulated firms, including claims management companies (CMCs), from 9 December 2019.

The FCA has agreed with HM Treasury a later commencement date for benchmark administrators to allow it to carry out a dedicated consultation for benchmark administrators before making final rules for the sector. As per the FCA's near-final rules, CMCs will not come into scope until they have been authorised by the FCA. This does not affect the timing of commencement for any other firm. The Commencement Order will be made by HM Treasury, after which the FCA will publish a Policy Statement setting out its final rules.

## FCA BOARD MINUTES: 30 MAY 2019

On 11 July, the FCA published [the minutes](#) of the FCA Board meeting held on 30 May 2019. The Board discussed the report from the Specialist Supervision Division concerning mini-bonds, updates on matters relating to the PRA, feedback on the FCA consultation paper 'High Cost Credit - Buy Now Pay Later (BNPL)', and the draft of the FCA Annual Report for 2018/19.

The Board also approved the Mortgages and Home Finance (Peer to Peer) Instrument 2019 (FCA 2019/75), the Personal Current Accounts and Overdrafts Instrument 2019 (FCA 2019/71), and the Shareholder Rights Directive (Asset Managers and Insurers) Instrument 2019 (FCA 2019/68).

## SIGNPOSTING TO TRAVEL INSURANCE FOR CONSUMERS WITH MEDICAL CONDITIONS - CP19/23

On 15 July, the FCA published a [Consultation Paper \(CP19/23\)](#) on proposals to assist consumers with pre-existing medical conditions (PEMCs) in accessing affordable travel insurance covering their medical conditions. The FCA is requesting feedback on the introduction of a new 'signposting' rule in order to provide consumers with detailed information on a directory of travel insurance firms, which can cover consumers with more serious PEMCs. Firms will be required to signpost consumers in the following circumstances:

- ▶ When a consumer is declined or otherwise not offered cover, or cover is cancelled mid-term, due to a PEMC

- ▶ When a consumer is offered cover with an exclusion for a PEMC that cannot be removed
- ▶ When a consumer is offered cover with an additional loading to their base premium due to their PEMC.

In addition, the FCA will collaborate with stakeholders to help consumers to better understand the travel insurance market, and the implications of travelling with exclusions.

Comments should be submitted by 15 September 2019.

### THE FUTURE OF REGULATION: AI FOR CONSUMER GOOD

On 16 July the FCA published [a speech](#) by Christopher Woolard, FCA Executive Director of Strategy and Competition, at the AI Ethics in the Financial Sector conference. Woolard spoke about how the FCA views the application of Artificial Intelligence (AI) in financial services and highlighted that as a regulator the FCA consider its use from three main perspectives.

- ▶ Firstly, which parts of the debate are novel and where is there continuity
- ▶ Secondly, how can the FCA ensure AI is creating value for citizens
- ▶ And lastly, how can the FCA work with others to develop a shared understanding that will determine an approach over the years ahead.

### NEW PLATFORM TO REPLACE GABRIEL AND IMPROVE FCA DATA COLLECTION FROM FIRMS

On 16 July, the FCA [announced](#) they have started work to improve the way they collect data from firms and plan to move to a new platform for its data collection systems, which will include replacing Gabriel.

Gabriel is the main regulatory data collection system, facilitating the collection of over 500,000 submissions annually, across 120,000 users and 52,000 firms.

The FCA want user views to help with this project by completing their [survey](#).



## **FCA LAUNCHES CONSULTATION GUIDING FIRMS ON THE FAIR TREATMENT OF VULNERABLE CUSTOMERS - GC19/3**

On 23 July, FCA launched a [consultation on proposed guidance](#) for firms on the fair treatment of vulnerable customers. The proposed guidance sets out the FCA's view of what the FCA Principles require of firms to ensure that vulnerable consumers are consistently treated fairly across financial services sectors. The FCA wants to see doing the right thing for vulnerable consumers deeply embedded in firms' culture. As part of the FCA's priority to protect vulnerable consumers, it has been working extensively with stakeholders on this issue. Whilst many firms have made significant progress in how they treat vulnerable consumers, the FCA believes that there needs to be more consistency across financial services sectors. In some cases, firms are clearly failing to consider the needs of vulnerable consumers, leading to harm.

The draft Guidance is set out in three main sections:

- ▶ Understanding the needs of vulnerable consumers
- ▶ Ensuring staff have the skills and capabilities needed
- ▶ Translating that understanding into taking practical action.

The Guidance proposals do not aim to provide a checklist of required actions, rather it provides options for ways in which firms can comply with the principles. Precisely what the Guidance means for individual firms will depend on the specific context of the firm, including, amongst other things, firm size, the markets it operates in and the characteristics of its customers. Firms will need to think about what the guidance means for their business and customers, and how they are understanding and addressing the needs of vulnerable customers.

## **FCA ANNOUNCES EXTENSION TO ITS USE OF THE TEMPORARY TRANSITIONAL POWER**

On 25 July, the FCA confirmed it intends to extend the proposed duration of the directions issued under the temporary transitional power to the 31 December 2020. This is to reflect the extension of Article 50. Other than the additional time the FCA's approach remains unchanged.

The temporary transitional power is intended to minimise disruption for firms and other regulated entities if the UK leaves the EU without a withdrawal agreement. Under the power firms do not generally need to prepare now to meet the changes to their UK regulatory obligations that are connected to Brexit.

# ENFORCEMENT ACTION

## FCA REGULATORY FINES ROUND-UP

FCA regulatory fines for 2019 now total [£349.9m](#). The following fines and related enforcement actions have been announced in the past month:

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<b>Standard Life Assurance Limited (SLAL)</b>	<p>The FCA has fined SLAL £30.8m for failures related to its non-advised sales of annuities.</p> <p>SLAL failed to put in place adequate controls to monitor the quality of the calls between its call handlers and non-advised customers. At the same time, SLAL offered its front-line staff large financial incentives to sell annuities, which encouraged them to place their own financial interests ahead of their customers. This gave rise to a significant risk that SLAL's call handlers would fail to provide customers with the information they needed to choose an annuity appropriate to their circumstances.</p> <p>SLAL used high level call guidelines which gave call handlers significant discretion about how they communicated with customers. This meant that the firm failed to provide some customers with appropriate information about enhanced annuities, including the option to shop around for a better deal.</p> <p>The SLAL call handlers had the opportunity to receive significant bonuses and rewards if they met or exceeded sales targets. During the period of misconduct, nearly 22% of call handlers received more than 100% of their basic salary in bonus payments. This created the risk that call handlers would place their own financial interests ahead of fair customer outcomes.</p> <p>SLAL failed to put in place robust systems and controls to mitigate the risks created by high level call guidelines and large bonuses. It failed to adequately monitor calls between call handlers and customers and provide sufficient management information to enable senior management to identify failings in relation to the quality and volume of call monitoring.</p> <p>On 31 January 2017, SLAL voluntarily agreed to conduct a past business review to identify and pay redress to those customers who were likely to have suffered, or did suffer, loss as a result of its failures. As at 31 May 2019, SLAL has paid approximately £25.3 million to 15,302 customers.</p>
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## UNAUTHORISED FIRM AND DIRECTORS TO PAY RESTITUTION TO CONSUMERS

On 10 July, the High Court consented to an order by which Samuel Golding, Shantelle Golding, Digital Wealth Limited and Outsourcing Express Limited will pay funds held by them to the FCA for distribution to investors. The funds were raised by the defendants in unauthorised investment schemes operated by them.

The schemes purported to involve the online purchase of wholesale goods from China for onward sale and promised unrealistically high returns, in some cases up to 100% of the amount invested. In fact, the schemes were an unauthorised collective investment scheme and illegal deposit-taking, in contravention of the Financial Services & Markets Act 2000. No significant trading was conducted and the schemes relied on a continuous flow of new investors to fund existing investors' returns. Samuel and Shantelle Golding admitted to the Court they were personally involved in these contraventions.

The schemes raised just over £15m from over 1,000 individual accounts. The FCA took urgent enforcement action to stop it and prevent the disposal of the remaining funds. Of the £15m that was raised, £9.25m was paid out to investors as returns and the defendants spent about £2.7m, including significant sums on travel, hotels and retail goods.

The Court order confirms that Mr and Mrs Golding will pay all funds held by them to the FCA for distribution to investors.



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