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INSURANCE REGULATORY EBULLETIN

ROUND UP OF REGULATORY DEVELOPMENTS IN MAY
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. By now we are all used to home-working but the novelty of virtual meetings is no doubt wearing thin! At least there seems to be some light at the end of the tunnel with the start of the easing of some of the lockdown restrictions.

Last month I noted BDO had temporarily closing its offices. While, this unusual situation continues with no confirmed end in sight, we continue to operate and serve our clients as a fully-remote, fully-connected workforce.

May has again been a busy month on the regulatory front as a result of the implications of the COVID-19 on both prudential and conduct regulation and for financial reporting in general. The regulators in Europe and the UK continue to defer making and proposing new policy but continue to emphasise their focus on ensuring the insurance sector is both financially resilient and treats its customers fairly. COVID-19 now looks certain to be a historic event for the insurance industry in terms of both the claims quantum and its reputation.

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.

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



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EIOPA

EIOPA CHANGES TIMETABLE FOR SOLVENCY II REVIEW

On 30 April, EIOPA has [announced](#) a delay to delivering its Solvency II Review advice to the EC until December 2020. EIOPA [announced on 17 March 2020](#) that the deadline for the information request on the impact assessment of the 2020 Solvency II Review would be extended by two months, to 1 June 2020.

The new timing strikes a balance between reviewing the Solvency II directive and the need for the advice to reflect recent developments.

There was an increase in credit risk across all asset classes and liquidity and funding risks increased to ‘high’ as some indicators are expected to deteriorate.

Insurance risk was raised to ‘high’ reflecting the negative effects of income reduction (due to the impact of drop in economic activity on new as well as existing business) and potential increase in claims for specific business lines.

DIGITAL RESPONSIBILITY AND THE ROLE OF ACTUARIES

On 4 May EIOPA published a [speech](#) delivered virtually by Gabriel Bernardino, Chairman of EIOPA, at the annual conference of the German Association of Actuaries. The speech covered the following topics:

- ▶ the state of play of Big Data analytics in the insurance sector;
- ▶ EIOPA’s work on digital ethics; and
- ▶ the role of actuaries in the digital age.

RISK DASHBOARD APRIL 2020

On 18 May, EIOPA published its [latest Risk Dashboard](#). The key points set out in the Risk Dashboard include that risk exposures increased across the European insurance sector as COVID-19 caused disruption to all financial sectors and economic activities.

The impact points to a “double-hit” scenario negatively affecting insurers on both asset and liability sides of the balance sheet.

Macro and market risk indicators worsened in March 2020, moving from ‘high’ to ‘very high’.

PRUDENTIAL REGULATION

SOLVENCY II: GROUP AVAILABILITY OF SUBORDINATED LIABILITIES AND PREFERENCE SHARES - PS10/20

On 30 April, the PRA published a Policy Statement (PS10/20) to all insurance firms within the scope of group supervision under the Solvency II Directive and to the Society of Lloyd's. It provides feedback to responses to Consultation Paper (CP) 16/19 'Solvency II: Group availability of subordinated liabilities and preference shares' and contains the PRA's final policy in an updated version of Supervisory Statement (SS) 9/15 'Solvency II: Group supervision'.

The PRA has added additional material to SS9/15 to clarify the final policy to provide greater clarity on the PRA's assessment of group availability for different types of groups, and on the legal requirements that restrict the ability of subordinated liabilities and preference shares to absorb all types of group losses.

The policy took effect on 30 April 2020.

SOLVENCY II: GROUP SUPERVISION - SS9/15

On 30 April, the PRA released a [Supervisory Statement \(SS9/15\)](#) on Solvency II: Group supervision. The SS updates the existing SS following Policy Statement (PS) 10/20 'Solvency II: Group availability of subordinated liabilities and preference shares' to clarify the PRA's approach:

- ▶ Where a firm seeks to demonstrate that the Solvency II assumption that subordinated liabilities and preference shares are not effectively available to cover group SCR is inappropriate in the firm's specific circumstances. The SS clarifies that the firm would need to satisfy the PRA that these own fund items are available to absorb losses anywhere in the group.

- ▶ That a firm may demonstrate this through intra-group guarantees, but notes that this is not likely to be appropriate for most groups given specific features.

The SS also notes that the PRA is receptive to proposals of alternative approaches that address the legal restrictions associated with such instruments.

The SS is addressed to all UK Solvency II firms and to the Society of Lloyd's and took effect on 30 April 2020.

PRA STATEMENT ON THE PROPOSED USE OF TEMPORARY TRANSITIONAL POWERS

On 30 April, the Bank of England and the PRA issued a [joint statement](#) on HM Treasury's publication of the intention to retain the regulators' temporary transitional power (TTP) introduced through the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 and shift its application so it can be used by UK financial regulators for a period of two years from the end of the transition period.

The Bank and the PRA plan to use the TTP after the transition period, meaning that in all but a few areas, PRA-regulated firms do not need to complete preparations to implement changes to UK law resulting from the end of the transition period by December 2020.

PRA STATEMENT ON PRIORITISATION IN LIGHT OF COVID-19

On 7 May, the PRA [announced additional details](#) of its plans to support firms and allow them to focus their resources on the highest priority work.

The Prudential Regulation Committee and the Financial Policy Committee have agreed to re-prioritise the following areas of the PRA's work:

- ▶ Climate change - the launch of the exercise postponed until at least mid-2021;
- ▶ LIBOR transition - PRA and FCA to resume full supervisory engagement on Libor from 1 June 2020, including data reporting at the end of Q2;
- ▶ 2019 Insurance Stress Test - not publishing the results of last year's test and postponing the next Insurance Stress Test to 2022, with a view to seeking feedback from firms on the proposed design during Q4 2021; and
- ▶ Calculation of Stressed VAR for CRR firms.

In addition, the PRA is making operational changes to ease the burden on firms, including postponing or scaling back planned reviews and deferring governance decisions on some less critical matters.

INSURANCE SPECIAL PURPOSE VEHICLES: UPDATES TO AUTHORISATION AND SUPERVISION - PS13/20

On 22 May, the PRA has released a [Policy Statement \(PS13/20\)](#) providing feedback to responses to Consultation Paper (CP) 19/19 'Insurance special purpose vehicles: Updates to authorisation and supervision'. The PS contains the PRA's final policy in regards to:

- ▶ amendments to the Insurance Special Purpose Vehicle Part of the PRA Rulebook (Appendix 1) - the [PRA Rulebook: Solvency II Firms: Insurance Special Purpose Vehicles Instrument 2020](#);
- ▶ an updated [Supervisory Statement \(SS\) 8/17 'Authorisation and supervision of insurance special purpose vehicles'](#) (Appendix 2); and
- ▶ an updated Multi-arrangement Insurance Special Purpose Vehicle (MISPV) New Risk Assumption Notification Form (Appendix 3).

The Policy came into force on 26 May 2020.

LIFE BEYOND SOLVENCY II

On 22 May, Charlotte Gerken, PRA Executive Director of Insurance Supervision, gave the [keynote address](#) at the Association of British

Insurers' Prudential Regulation webinar. She discussed the role played by Solvency II in the industry's response to COVID-19; lessons learned from COVID-19 that may impact post Solvency II implementation; and emerging supervisory priorities.

She concluded that many of the measures contained in Solvency II have been effective in mitigating the impact of the disruption to financial markets. Finally, she highlighted the importance of the fundamental principles requiring prudent capital and risk management during a systemic event.

SOLVENCY II: PRUDENT PERSON PRINCIPLE - PS14/20

On 26 May, the PRA published Policy Statement (PS14/20) setting out the PRA's expectations of firms in relation to the requirements of the Prudent Person Principle (PPP) under the Solvency II Directive.

Following the consultation, the PRA made some changes to the draft policy. The most significant amendments involve clarification of:

- ▶ objective standards;
- ▶ the extent of risk management and outsourcing expectations; and
- ▶ the distinction between valuation uncertainty at a point in time and uncertainty over the realisable value of an asset under stress.

The related [SS1/20](#) covers the following:

- ▶ development and maintenance of an investment strategy;
- ▶ management of risks arising from investments and internal governance within the investment function; and
- ▶ investment in assets not admitted to trading on a regulated market (hereafter 'non-traded assets') and intragroup loans and participations.

The PS and SS are relevant to all UK Solvency II firms (including the provisions relating to Solvency II groups), mutuals, third-country

branches, the Society of Lloyd's and its managing agents.

The expectations set out in the attached SS1/20 will come into effect upon publication of the PS on 27 May 2020.

DATA PROTECTION

ICO SETS OUT NEW PRIORITIES FOR UK DATA PROTECTION DURING COVID-19 AND BEYOND

On 5 May, the Information Commissioner's Office (ICO) published [an article](#) and [infographic](#) outlining how the ICO has reshaped its priorities for privacy protection to protect the public interest and support economic growth and innovation during and after the COVID-19 crisis.

Over the coming months the ICO is aligning to the following priorities:

- ▶ protecting vulnerable citizens;
- ▶ supporting economic growth and digitalisation, including for small businesses;
- ▶ shaping proportionate surveillance;
- ▶ enabling good practice in AI;
- ▶ enabling transparency; and
- ▶ maintaining business continuity: developing new ways of working in readiness for recovery

Some ICO projects are being paused, but it will still be maintaining its statutory functions, including dealing with complaints, and investigating data breach reports.

FINANCIAL REPORTING

AMENDMENTS TO GUIDANCE ON THE STRATEGIC REPORT - MAY 2020

On 11 May, the FRC published its [editorial amendments](#) to the guidance on the Strategic Report and Section 172 reporting requirements for medium sized companies.

The amendments include clarifications on the definition of a medium sized company, and the engagement with employees and amendments to Appendix II.

UPDATED Q&A 14 MAY 2020

On 14 May, the FRC published [updated Q&As](#) on the measures being urgently developed for Company filings, AGMs and other general meetings during COVID-19.

CONDUCT REGULATION

REGULATION ROUND-UP CORONAVIRUS EDITION

3

On 30 April, the FCA published a third special COVID-19 Regulation round-up.

The all sector topics included:

- ▶ Key workers in financial services - COVID-19 testing now includes essential workers with symptoms who are [self-isolating](#), to help them return to work if they test negative.
- ▶ Wet-ink signatures - statement of 20 April setting out expectations in relation to [wet-ink signatures](#).
- ▶ Professional qualifications exams - information on expectations on completing [professional qualifications](#) in light of the pandemic.

Special topics for the general insurance sector were:

- ▶ Regulatory reporting changes - introduction of temporary measures for firms submitting regulatory returns allowing flexibility on the submission deadlines for [specific returns](#). This applies to submissions that are due up to and including 30 June 2020, and the Employers' Liability Register compliance return due in August.
- ▶ Complaints handling - [published a further statement](#) about complaint handling (including PPI) including what firms should do if their complaint handling is delayed.
- ▶ Legal clarity on business interruption insurance claims - the [intention](#) to obtain a court declaration to resolve contractual uncertainty in business interruption (BI) insurance cover (also covered in more detail below).
- ▶ New measures to help insurance customers and small businesses impacted by coronavirus - [proposals](#) that insurance firms should consider whether their products still

offer value to customers and whether they can be doing more for those suffering a financial impact because of the virus.

REGULATION ROUND-UP CORONAVIRUS EDITION

4

On 15 May, the FCA published a fourth special COVID-19 Regulation round-up. The all sector topics included:

- ▶ Financial Services Regulatory Initiatives Forum launches Grid to help financial firms' planning - publication of the [Regulatory Initiatives Grid](#). The Grid is a 12-month forward look of major regulatory initiatives affecting the financial services sector to help firms understand and plan for the timing of new initiatives that may have a significant operational impact.
- ▶ Period to cover absent Senior Managers extended - the FCA for all solo-regulated firms have [extended the maximum period firms can arrange cover for a Senior Manager](#) without being approved, from 12 weeks to 36 weeks, in a consecutive 12-month period.
- ▶ Statement on how firms should handle post and paper documents - FCA [statement on how firms should handle post and paper documents](#).
- ▶ Information security & financial crime - on 6 May the FCA published some updates on expectations for [information security](#) & [financial crime systems and controls](#).

Special topics for the general insurance sector were:

- ▶ Product value - FCA [expectations](#) for insurers and insurance intermediaries on considering the value of their products in light of the exceptional circumstances arising out of coronavirus.

- ▶ Customers in temporary financial difficulty - FCA [expectations](#) for firms when dealing with customers who may be experiencing temporary financial difficulty as a result of the coronavirus pandemic.
- ▶ Access to premises - updated FCA [expectations of firms](#) on how firms treat customers who may not be able to access their premises as a result of Government restrictions on travel.
- ▶ Financial crime systems and controls - FCA our [expectations](#) on how firms should apply their systems and controls to combat and prevent financial crime during this crisis, in particular being vigilant to new types of fraud and amending the control environment where necessary to respond to new threats.

REGULATION ROUND-UP CORONAVIRUS EDITION 5

On 29 May, the FCA published a fifth special COVID-19 Regulation round-up. The all sector topics included information on call recording obligations and working from home. The FCA issued a [statement](#) that firms should continue to record calls, but accepted that there could be some scenarios where this was temporarily not possible. Firms should make the FCA aware if for any reason they are unable to continue to meet the call recording requirements. The FCA expect firms to consider what steps they could take to mitigate outstanding risks if they are unable to comply with their obligations to record voice communications. This might include enhanced monitoring or retrospective review once the situation has been resolved.

Special topics for the general insurance sector related to allowing individuals to carry over Continuing Professional Development (CPD). The FCA will [temporarily allow firms](#) to let individuals in exceptional circumstances carry over any uncompleted CPD hours to the next CPD year, i.e. the next 12-month period in which to complete the relevant CPD. This applies to CPD years ending before 1 April 2021.

NUMBER OF SKILLED PERSONS REPORTS COMMISSIONED IN Q4 2019/20

On 29 April, the FCA published a list of the number of Skilled Person reports commissioned Q4 2019/20. The [report](#) shows that 24 reports were commissioned across all seven FCA Sectors.

FCA APPROACH TO THE TEMPORARY TRANSITIONAL POWER

On 30 April, the FCA provided [an update](#) on the use of the Temporary Transitional Power (TTP) directions and Brexit Policy Statement (PS19/5) to confirm details about the application of the TTP including stating transitional relief from the end of the transitional period, until 31 March 2022, will be granted.

This relieves UK solo-regulated firms from the requirement to complete preparations to implement changes in UK law by the end of the transition period, December 2020. However there are certain areas where transitional relief will not be granted, as outlined in the notice.

POLICY DEVELOPMENT UPDATE

On 1 May, the FCA published a [policy development update](#) providing information on recent and upcoming FCA publications

FCA'S NATIONAL AND INTERNATIONAL RESPONSE TO COVID-19 AND BREXIT

On 6 May, the FCA published [a speech](#) from the Executive Director of International, Nausicaa Delfas, which was given at the Deloitte Annual Conduct Risk Conference.

The speech outlines the response of the FCA to the coronavirus pandemic and preparations being undertaken for the end of the Brexit transition period.

The speech also covered the FCA's continuing work with the Treasury and the Bank of England to ensure a smooth transition out of the EU by preparing for a range of scenarios. Firms are encouraged to consider the actions they will

need to take so that they are ready for the end of the transition period.

FCA BOARD MINUTES: 26 MARCH 2020

On 7 May, the FCA released [the minutes](#) of the FCA Board Meeting held 26 March 2020. The Board discussed, among other issues, the response to COVID-19, the Chief Executive's report, the 20/21 Business Plan Final Draft, FCA Fees 2020/21, and Financial Ombudsman Service (FOS) 2020/21 Budget.

FCA TEST CASE OF THE VALIDITY OF BI CLAIMS

On 1 June, FCA provided [an update](#) on progress on its court action on business interruption (BI) insurance policies.

Since the FCA made its announcement on 1 May, 56 insurers have been approached and over 500 relevant policies from 40 insurers have been reviewed. A sample of 17 policy wordings that capture the majority of the key issues that could be in dispute have been identified.

This [initial list of insurers](#) and the policy wordings they use is not exhaustive, and the FA have published a [short consultation on draft guidance](#) asking all insurers to check their policy wordings against those the FCA intend to test to see if theirs will be impacted by the outcome of the case. The FCA expects to publish a list of all the relevant insurers and policies that may have impacted wordings in early July.

The update gives further detail on the proposed court action, including identifying the representative sample of policy wordings to be examined in the test case, insurers that use these wordings, and which of those insurers have been invited, and have agreed, to participate in the proceedings.

In addition to the FCA's proposed representative sample of terms, they have also published [proposed assumed facts](#) (for example, the types of business and how they responded to the pandemic), a [proposed issues matrix](#) and [proposed questions for determination by the court](#). The FCA invite comments from other

insurers, policyholders and other stakeholders on these documents by 3pm on Friday 5 June.

The FCA also issued today a [consultation on draft guidance](#) to set out our expectations of all firms handling BI claims and any related complaints during this period, including an expectation that they identify those policies where their decision to deny claims may be affected by the test case.

Further information is on the FCA's [business interruption webpage](#).

The FCA want to achieve clarity for all concerned in an unprecedented situation. To do this, they are taking a representative sample of cases to court. The FCA will put forward policyholders' arguments to their best advantage in the public interest.

As stated in its [Dear CEO letter of 15 April](#), the FCA view remains that most SME insurance policies are focused on property damage (and only have basic cover for BI as a consequence of property damage) so, at least in the majority of cases, insurers are not obliged to pay out in relation to the coronavirus pandemic. The test case is focused on the remainder of policies that could be argued to include cover.

COVID-19: INFORMATION FOR FIRMS

The (FCA continues to regularly update its [COVID-19: Information for firms](#).

Firms can sign up to receive a daily email round-up of FCA coronavirus news and publications published on its website.

ENFORCEMENT ACTION

FCA REGULATORY FINES ROUND-UP

FCA regulatory fines in 2020 total [£2.9m](#). No new fines have been announced by the PRA or FCA in the past month.

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