IDEAS | PEOPLE | TRUST

Insurance Regulatory eBulletin

Round up of regulatory developments in November 2023

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 during November 2023 and their implications across the insurance sector.

The FCA have published a revised regulatory Initiatives grid overing the forthcoming 24 months providing the timing and the identification of closely interconnected initiatives. The are also continuing initiatives noted within this edition related to developing smarter regulation, in line with the international competitiveness and growth objective under the Financial Services & Markets Act. The Corporate Governance section also notes some interesting developments, including the results of a thematic review published by the FRC in relation to IFRS 17 disclosures.

As usual there is much detail included in this eBulletin, referenced to the source documents. I hope you will find this helpful in identifying matters relevant to yourself. Please do not hesitate to contact myself or your usual BDO contact if you have any concerns over any matter highlighted in this update. For more information about our audit, tax and advisory services to the insurance sector, visit our insurance services page.

I hope you enjoy reading this latest update. As this will be the last edition of 2023, I would like to take this opportunity of sending you my good wishes for this festive season.

ALEX BARNES
PARTNER

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

CONTENTS

PRUDENTIAL REGULATION

'LESS IS MORE' OR 'LESS IS A BORE'? RE-CALIBRATING THE ROLE OF CENTRAL BANK RESERVES - SPEECH BY ANDREW HAUSER

On 3 November, Andrew Hauser, Executive Director of the Bank, responsible for Banking, Payments and Financial Resilience, delivered a speech at Kings College London's Bank of England Watchers' Conference. He spoke about the role of central bank reserves in maintaining micro- and macro-prudential stability in the face of the growing incidence of systemic liquidity shocks. He said that central banks have a much larger role to play in helping to ensure effective system-wide liquidity management than they did pre-Global Financial Crisis – with the main debate being over how best to design that role.

CATHERINE L MANN'S ANNUAL REPORT FOR THE TREASURY SELECT COMMITTEE

On 21 November, the Bank of England published the Annual Report for the Treasury Select Committee compiled by Catherine L. Mann, External Member of the Bank's Monetary Policy Committee. The report underlines the idea that high inflation carries the risk of generating some degree of backward-looking price and wage setting behaviours. The report recommends that a tighter monetary policy is put in place in order to reduce inflation itself, as well as to align inflation expectations with the remit.

DAVE RAMSDEN'S ANNUAL REPORT FOR THE TREASURY SELECT COMMITTEE

Also on 21 November, the Bank of England published the Annual Report for the Treasury Select Committee, compiled by Dave Ramsden, Deputy Governor for Markets and Banking. The report discusses the evolution of the UK economy from the period September 2022 to November 2023. In particular, the report focuses on five key features that have characterised the economy over the past year:

- the double-digit peak and sharp fall back in headline CPI inflation;
- the divergent trends in relation to the contributions of the main components of inflation;
- a greater than expected resilience regarding activity;
- the tightness of the labour market; and
- higher than expected wage growth.

REMIT AND RECOMMENDATIONS FOR THE FINANCIAL POLICY COMMITTEE: AUTUMN STATEMENT 2023

On 22 November, HM Treasury published a letter from the Chancellor of the Exchequer to the Governor of the Bank of England, which includes recommendations for the Financial Policy Committee for the coming year, following the 2023 Autumn Statement.

PRO-INNOVATION REGULATION OF TECHNOLOGIES REVIEW: CROSS-CUTTING

On 22 November, coinciding with the Autumn Statement, HM Treasury published the government's response to Professor Dame Angela McLean's review of how pro-innovation regulation can support regulated industries. In the paper, the government accepted eleven of the review's twelve recommendations to encourage pro-innovation regulation. This response document outlines how the government plans to implement the recommendations in practice.

UK RETAIL DISCLOSURE FRAMEWORK - DRAFT STATUTORY INSTRUMENT AND POLICY NOTE

On 22 November, HM Treasury published a near-final version of the statutory instrument (SI) to replace the EU Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation and create a new UK retail disclosure framework. This draft SI is part of HM Treasury's programme to deliver a Smarter Regulatory

Framework for financial services, tailored to the UK and, together with the accompanying explanatory policy note, sets out the government's approach to developing a new legislative framework for UK Retail Disclosure, and will facilitate the delivery of new FCA rules to replace PRIIPs.

Comments should be submitted by 10 January 2024.

A SMARTER REGULATORY FRAMEWORK FOR FINANCIAL SERVICES

On 28 February, HM Treasury published a collection of information relating to its programme of secondary legislation to replace retained EU law to deliver a Smarter Regulatory Framework for financial services tailored to the UK. Retained EU legislation will be replaced with rules set by the financial services regulators, working within a framework set by government and parliament.

FSCS GENERAL INSURANCE LIMIT - DP2/23

On 2 November, the PRA published a discussion paper setting out its analysis of the areas of General Insurance (GI) policy for which increasing FSCS protection from 90% to 100% could be warranted on policyholder protection grounds. The discussion paper also sets out the PRA's analysis of those areas of GI where additional FSCS coverage could be needed to secure an appropriate degree of protection and possible options to remedy this. The PRA is seeking feedback from the public and other industry stakeholders regarding whether it would be appropriate to increase all or some of the FSCS limits.

The deadline for submitting comments is 24 January 2024. The following options are considered:

- 100% coverage of all GI products;
- Targeted additional coverage;
- Rule-based discretion;
- FSCS excess;
- Reverse deductible; and
- Maintain protection at current level.

FUNDED REINSURANCE - CP24/23

On 16 November, the PRA issued a consultation paper setting out the PRA's proposed expectations in respect of firms entering into or holding funded reinsurance arrangements as cedants. The PRA setting out its expectations, believes the proposals will advance its primary objectives for safety and soundness and policyholder protection, while allowing the life insurance sector to continue to play an important role in productive investment in the UK economy. The proposals would result in a new draft supervisory statement which would cover expectations on:

- the ongoing risk management of funded reinsurance arrangements;
- the modelling of the solvency capital requirement associated with funded reinsurance arrangements; and
- how firms should consider the structuring of funded reinsurance arrangements.

Comments should be submitted on or before 16 February 2024.

CONDUCT REGULATION

CONSUMER DUTY: NOT ONCE AND DONE

On 1 November, Nisha Arora, Director of Cross Cutting Policy and Strategy at the FCA, delivered a speech at the Deloitte: Consumer Duty - Next Steps event. She spoke about the importance of the Consumer Duty and the good practices that have already been seen since it came into force, and that the FCA continuing this momentum will realise further benefits to consumers, firms, and the UK as a whole. She went on to say that firms need to make sure they are learning and improving continuously and must be able to evidence this in their annual board report, and that those with closed products and services should check they are on track to meet the 31 July 2024 implementation deadline, after which the Duty will apply also to closed products and services.

LISTING AUTHORITY ADVISORY PANEL ANNUAL REPORT 2022/23

On 24 November, the FCA published the Listing Authority Advisory Panel's (LAAP) Annual Report for 2022-2023.

The report outlined LAAP's main areas of focus and activity in the past year, which due to nature of policy development, in many instances, are continuations of work from previous years. The FCA has also adopted the diversity targets for all the FCA's Independent Panels. These targets reflect those presented by the FCA in April 2022 for the board and executive management of listed companies and are as follows:

- At least 40% of each Panel are women;
- At least one of the senior positions (Chair, Deputy Chair or equivalent) across the Panels is held by a woman; and
- At least one member of each Panel is from an ethnic minority background.

According to the FCA, the Panel met each target as of 31 March 2023.

REGULATORY INITIATIVES GRID

The FCA has published the latest edition of its Regulatory Initiatives Grid which sets out the planned regulatory initiatives for the next 24 months. The Grid provides detail on the timing of initiatives over a 24-month horizon and highlights key examples of closely interconnected initiatives to help stakeholders easily identify these.

SYNTHETIC DATA EXPERT GROUP UPDATE ON PROGRESS

On 2 November, the FCA published an update on the progress made by the Synthetic Data Expert Group (SDEG), which was established in March 2023 to investigate synthetic data use in financial markets. The goal of the SDEG, which is scheduled to run until November 2024, is to give practitioners and policymakers real, useful insights from synthetic data. The SDEG will produce a report based on their analysis and will examine best practices and lessons discovered. These will be centred around the following themes:

- data augmentation and bias mitigation;
- system testing and model validation; and
- data sharing (internal and external).

FCA JOINS FORCES WITH GLOBAL REGULATORS TO FOSTER DIGITAL INNOVATION WITH PROJECT GUARDIAN

On 2 November, the FCA announced that it is partnering with regulators across the world as part of the Monetary Authority of Singapore's (MAS) Project Guardian, a collaborative initiative with the financial industry that explores fund and asset tokenisation use cases, and decentralised finance. The FCA joins MAS, Singapore's central bank, the Financial Services Agency of Japan (FSA), and the Swiss Financial Market Supervisory Authority (FINMA) in the project, which aims to share knowledge and examine the benefits, regulatory challenges, and commercial use cases of asset and fund tokenisation.

GUIDANCE ON THE ANTI-GREENWASHING RULE – GC23/3

On 28 November, the FCA issued a guidance consultation on general guidance that sets out the FCA's expectations for any FCA-authorised firm that makes claims about the sustainability of a product or service. The FCA has introduced the 'anti-greenwashing' rule (ESG 4.3.1R) into its Handbook to help ensure that sustainability-related claims made by authorised firms about their products and services are fair, clear, and not misleading, and are consistent with the sustainability characteristics of the product or services. The guidance is intended to help firms ensure that, as product and service offerings evolve, sustainability claims stand up to scrutiny and consumers are protected from potentially misleading or inaccurate information. Comments should be submitted by 26 January 2024.

The proposed effective date for the guidance is on 31 May 2024

PROCEEDS OF FRAUD - DETECTING AND PREVENTING MONEY MULES

On 13 November, the FCA updated its guidance setting out the key findings from its review of payment account providers' systems and controls against money mule activity. The findings show that some firms are working to address the challenges of money mules by implementing a range of measures and technologies to detect and deter fraudsters from using their organisation and harming customers. It notes that some firms have established proportionate approaches that use innovative solutions including facial recognition systems, device profiling and geolocation. Despite these efforts, not all firms are responding with the same focus, and some firms need to do more, including more proportionate checks at onboarding for indicators and red flags. The FCA found that most firms use the National Fraud Database as part of onboarding checks and sharing information with relevant authorities. However, some firms do not report promptly on relevant reporting systems where they identify a mule account.

The FCA will use its full regulatory tools, including enforcement action, if it identifies a firm failing to maintain proportionate and adequate systems and controls.

PRINCIPALS AND APPOINTED REPRESENTATIVES

On 20 November, the FCA updated its guidance on principals and appointed representatives. This update has added information on Consumer Duty.

FINANCIAL PROMOTIONS QUARTERLY DATA 2023 Q3

On 6 November, the FCA published data generated between 1 July 2023 and 30 September 2023 from its actions against firms breaching financial promotion rules, and referrals and investigations into unregulated activity. FCA interventions in Q3 2023 resulted in 5,310 promotions being amended or withdrawn by authorised firms. 488 alerts on unauthorised firms and individuals were issued, 11% of which were clone scams.

REGULATORY FEES AND LEVIES: POLICY PROPOSALS FOR 2024/25 – CP23/22

On 21 November, the FCA issued a consultation paper CP23/22 laying out its proposed policy to increase fees and levies in 2024/25. This paper applies to all FCA fee-payers, levy-payers of the Financial Ombudsman Service and of the Financial Services Compensation Scheme, and to any businesses considering applying for FCA authorisation or registration.

Comments should be submitted on or before 16 January 2024.

REGULATION ROUND UP

On 28 November, the FCA published its monthly Regulation Round-up. In addition to various topics, noted either last month or above, this noted, the following:

- Review of Overseas Appointed Representatives

The FCA have reminded principals to review any arrangements with overseas appointed representatives (OARs). If OARs do not carry on regulated activity in the UK, firms should consider whether the arrangements remain appropriate and, if not, terminate the contract.

EIOPA

We continue to monitor EIOPA's activity and draw your attention to it where we believe it to be necessary or helpful. This will, we hope, assist those firms operating in the EU.

Items of possible interest this month are as follows:

MACRO, MARKETS AND DIGITALISATION RISKS ARE INSURERS' TOP CONCERN ACCORDING TO EIOPA'S INSURANCE RISK DASHBOARD

EIOPA has released its Insurance Risk Dashboard for November 2023. The dashboard discusses insurers' exposures. High risks of main concern to the sector were identified as follows:

- Macro-related risks remain among the most relevant for the insurance sector as the outlook for the next four quarters GDP growth at global level has deteriorated and credit-to-GDP gap widened;
- Market risks are prominent as volatility in equity market increased and bond volatility remain elevated;
- Digitalisation and cyber risks increased to high levels and are expected to further increase according to the supervisory assessment. The frequency of cyber incidents impacting all sectors of activity, as measured by publicly available data, increased since the same quarter of last year. Cyber negative sentiment also indicates an increasing concern in the third quarter of 2023.

Risk levels for the remaining categories remain at medium levels.

EIOPA'S OCCUPATIONAL PENSIONS STATISTICS UPDATE COMES WITH VISUAL INSIGHTS INTO ASSET ALLOCATION AND MEMBERS

EIOPA has published a data release containing information from the final quarter of 2022, as well as a factsheet that demonstrates how European IORPs allocate the money they manage across different asset types and jurisdictions. The data's main focus is on investments in government bonds, corporate bonds, equities, and investment funds since it is these four categories that make up the vast majority of their investment portfolio.

MONTHLY UPDATE OF THE SYMMETRIC ADJUSTMENT OF THE EQUITY CAPITAL CHARGE FOR SOLVENCY II - END - OCTOBER 2023

EIOPA has published the technical information regarding the symmetric adjustment of the equity capital charge for Solvency II with reference to the end of October 2023.

EIOPA PUBLISHES MONTHLY TECHNICAL INFORMATION FOR SOLVENCY II RELEVANT RISK-FREE INTEREST RATE TERM STRUCTURES - END-OCTOBER 2023

EIOPA has published technical information related to the relevant risk-free interest rate term structures (RFR) with reference to the end of October 2023. Technical information relating to RFR is used in calculating the technical provisions for (re)insurance obligations.

JOINT COMMITTEE FINAL REPORT ON DRAFT IMPLEMENTING TECHNICAL STANDARDS ON THE MAPPING OF EXTERNAL CREDIT ASSESSMENT INSTITUTIONS' CREDIT ASSESSMENT

The Joint Committee of the three European Supervisory Authorities (ESAs), European Banking Authority (EBA), EIOPA, and European Securities and Markets Authority (ESMA), have published a final report related to the draft implementing technical standards amending Implementing Regulation (EU) 2016/1800 on the allocation of credit assessments of external credit assessment institutions to an objective scale of credit quality steps in accordance with Directive 2009/138/EC.

CORPORATE GOVERNANCE

FRC WELCOMES NEW REMIT LETTER

On 22 November, the FRC received a new remit letter from the Secretary of State for Business and Trade, Rt Hon Kemi Badenoch MP, which updates the government's priorities for the FRC's operations.

Richard Moriarty, CEO of the FRC responded to the Secretary of State, stating that the FRC's immediate priorities in this regard are to conclude our review of the UK Corporate Governance Code and then move to undertake a fundamental review of the UK Stewardship Code. We will also engage with stakeholders on a review of our guidance associated with the Corporate Governance Code, with the aim of achieving very effective governance and stewardship in a proportionate way with any unnecessary or disproportionate requirements or guidance removed or streamlined. Alongside this the FRC will continue to ensure our oversight and supervision of audit quality and financial reporting is effective.

GOVERNMENT WITHDRAWS DRAFT LEGISLATION INTENDED TO INTRODUCE NEW CORPORATE REPORTING REQUIREMENTS

The Government has withdrawn draft legislation which proposed to introduce new corporate reporting requirements for the UK's largest companies, including a new Resilience Statement and Audit and Assurance Policy Statement. Following consultation with businesses on the wider reporting regime, concerns were raised about imposing these additional reporting requirements and the FRC agreed to work on a new reform package that delivers a more targeted, simpler and effective framework for businesses and investors.

.

THEMATIC REVIEW: IFRS 17 'INSURANCE CONTRACTS' INTERIM DISCLOSURES IN THE FIRST YEAR OF APPLICATION

The FRC has published a thematic review of companies' first-time application of IFRS 17, a new and fundamental change in accounting for insurance contracts. The fragmented approach previously set out in IFRS 4 has been replaced with a more comprehensive principles-based approach in IFRS 17. Overall the FRC expressed satisfaction with the quality of IFRS 17 disclosures after reviewing the interim financial statements of ten companies. The FRC identified the following areas where disclosures could be improved:

- Companies should provide high quality disclosures in respect of complex or subjective areas;
- Accounting policies should be company-specific;
- Disclosure of significant judgements and estimates should be sufficiently detailed; and
- Companies should explain the transition approach adopted.

The FRC intends to follow up this thematic report with a similar thematic review of the first annual financial statements under IFRS 17.

2024 TAXONOMY SUITE PUBLISHED

On 9 November, the FRC announced the publication of the 2023 suite of FRC Taxonomies. The 2024 suite incorporates changes to all of the FRC's Taxonomies: UK IFRS, FRS 101, FRS 102, UKSEF, and Charities.

In addition, the Suite contains taxonomy documentation, supporting documents, key information sheets and release notes.

TRANSITION PLAN TASKFORCE

The Transition Plan Taskforce (TPT) published its final Disclosure Framework guidance in October. It has also published sector guidance for insurance: Insurance - Transition Taskforce.

On 13 November the TPT published, for consultation, further Sector Deep Dive guidance. There is no explicit deep dive guidance for insurance, although the guidance for Asset Owners is applicable to insurers' ownership of assets Sector Deep Dive - Transition Taskforce.

DRAFT UKSEF CONFORMANCE SUITE PUBLISHED

On 9 November, the FRC released for consultation a Conformance Suite for the UKSEF taxonomy and its multiple target document approach as part of the 2024 Taxonomy annual cycle. This document outlines the meaning and intention of UKSEF filing rules and should ensure universal consistency in the UKSEF filing regime, no matter the preparation application or the regulator.

Comments must be submitted on or before 31 December 2023.

INFORMATION COMMISSIONER'S OFFICE

We continue to monitor material being issued by the Information Commissioner's Office (ICO) with a view to highlighting high-level matters that may be relevant to readers.

COURT OF APPEAL JUDGMENT ON FREEDOM OF INFORMATION ACT APPEAL

On 22 November, the Court of Appeal ruled against the ICO in a Freedom of Information Act (FOIA) 2000 appeal regarding the ability to aggregate public interest factors for and against disclosure when applying exemptions under the Act.

The Department for Business and Trade appealed the Upper Tribunal's judgment that the public interest exemption cannot be combined when more than one exemption applies to the same information. In response, the ICO argued the Upper Tribunal's judgment was correct, and the Act is clearly structured to allow sequential consideration of single exemptions rather than aggregation.

Upholding the appeal, the Court of Appeal concluded that section 2(2)(b) of the FOIA does permit the public interest to be aggregated when deciding whether the public interest in maintaining the exemption of information from disclosure, outweighs the public interest in its disclosure.

The ICO notes the ruling and will carefully consider next steps.

ICO AND EUROPEAN DATA PROTECTION SUPERVISOR SIGN MEMORANDUM OF UNDERSTANDING

On 8 November, the ICO and the European Data Protection Supervisor signed a Memorandum of Understanding (MoU), which reinforces their common mission to uphold individuals' data protection and privacy rights, and cooperate internationally to achieve this goal.

The MoU builds on the strong collaboration already established in other forums that both authorities mutually participate in, such as the Global Privacy Assembly and the G7 Data Protection Authorities Roundtable.

The MoU sets out how the authorities will continue to share experiences and best practices; cooperate on specific projects of interest; share information or intelligence to support their regulatory work; and promote dialogue among data protection authorities and other digital regulators.

COMMISSIONER WARNS UK'S TOP WEBSITES TO MAKE COOKIE CHANGES

The ICO has warned some of the UK's top websites they face enforcement action if they do not make changes to comply with data protection law.

It has warned that some websites do not give users fair choices over whether or not to be tracked for personalised advertising. The ICO has previously issued clear guidance that organisations must make it as easy for users to "Reject All" advertising cookies as it is to "Accept All". Websites can still display adverts when users reject all tracking but must not tailor these to the person browsing.

The ICO has written to companies running many of the UK's most visited websites setting out its concerns and giving them 30 days to ensure their websites comply with the law.

The ICO will provide an update on this work in January, including details of companies that have not addressed its concerns. The action is part of its broader work to ensure that people's rights are upheld by the online advertising industry.

INFORMATION COMMISSIONER'S OFFICE ISSUES THREE FINES TOTALLING £170,000 FOR ILLEGAL DIRECT MARKETING

The ICO has announced that fines totalling £170,000 have been imposed against three firms offering financial services for illegal direct marketing under the Privacy and Electronic Communications Regulations (PECR):

- Digivo Media Ltd, which traded as Rid My Debt, was fined £50,000 for sending over 415,000 text messages from 24 March 2021 to 7 September 2021.
- MCP Online Ltd was fined £55,000 for making unsolicited financial services calls about pensions between 1 January 2022 and 28 September 2022.
- Argentum Data Solutions Ltd was fined £65,000 for both sending and permitting third parties to send over 2.3 million direct marketing text messages without valid consent.

ENFORCEMENT ACTION

PRA / FCA REGULATORY FINES ROUND-UP

We have reviewed key relevant enforcement action announced by the PRA / FCA during November and there were no relevant matters to report.

CONTACTS

EXTERNAL AUDIT
ALEX BARNES
Partner & Head of Insurance Audit
alex.barnes@bdo.co.uk

GEETA JOSHI
Partner
geeta.joshi@bdo.co.uk

TOM REED
Partner
tom.reed@bdo.co.uk

RUPERT LIVINGSTONE
Principal
rupert.livingstone@bdo.co.uk

ADEEL AJMAL
Director
adeel.ajmal@bdo.co.uk

MZ NETYISI
Director
mz.netyisi@bdo.co.uk

INTERNAL AUDIT
CHRIS BELLAIRS
Partner
christian.bellairs@bdo.co.uk

SAM PATEL
Partner
sam.patel@bdo.co.uk

LUKE PATTERSON
Partner
luke.patterson@bdo.co.uk

KUDZANAI MUMBURE
Director
kudzanai.mumbure@bdo.co.uk

REGULATORY ADVISORY
RICHARD BARNWELL
Partner
richard.barnwell@bdo.co.uk

MICK CAMPBELL
Partner
mick.campbell@bdo.co.uk

JOHN OWENS
Director
john.owens@bdo.co.uk

NICOLA BALL
Director
nicola.ball@bdo.co.uk

CASS
JAMES STEELE-PERKINS
Partner

ACCOUNTING & CORPORATE REPORTING ADVISORY
MARK SPENCER
Partner
mark.spencer@bdo.co.uk

ACTUARIAL
GRAHAM HANDY
Partner & Head of Insurance Advisory
graham.handy@bdo.co.uk

SANTIAGO RESTREPO
Partner
santiago.restrepo@bdo.co.uk

ELINORE O'NEILL
Director
elinore.oneill@bdo.co.uk

TAX
THOMAS TO
Partner & Head of Insurance Tax
thomas.to@bdo.co.uk

MICHAEL WHITESIDE
Director
michael.whiteside@bdo.co.uk

CORPORATE FINANCE
RAHOEL PATEL
Partner, Head of FS Transaction Services
rahoel.patel@bdo.co.uk

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

FORENSICS
RICHARD CAMERON-WILLIAMS
Partner
richard.cameron-williams@bdo.co.uk

OUTSOURCING
ROBERT HUTCHINGS
Director
robert.hutchings@bdo.co.uk

BDO REGULATORY SOLUTIONS
ADAM JACKSON
Client Director
adam.jackson@bdo.co.uk

FOR MORE INFORMATION:

ALEX BARNES

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

JOHN OWENS

+44 (0)7946 700 242
john.x.owens@bdo.co.uk

GRAHAM HANDY

+44 (0)7876 877 083
graham.handy@bdo.co.uk

www.bdo.co.uk