Reg Agenda

August 2023 | BULLETIN

What's inside...

- Reforming the Consumer Credit Act 1974: Consultation Response
- FCA statement on supervisory approach to certain mortgage disclosure requirements
- FCA publishes key findings of the 2022 Financial Lives survey

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A TECH MAHINDRA COMPANY

Welcome to Target's Reg Agenda

Foreword by

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Target Group
Chief Risk Officer

July was another busy month in the regulatory world, with firms dealing with the Mortgage Charter and the official start of the Financial Conduct Authority's (FCA) Consumer Duty for open products and services on 31st July 2023.

The regulation of Artificial Intelligence (AI) continued to be in the spotlight, with a FCA speech and House of Lords report being published.

HM Treasury issued multiple publications with updates from the Edinburgh Reforms, as well as publishing the response from the Reforming the Consumer Credit Act 1974 (CCA) consultation paper. The response details that all who took part in the consultation are supportive of making changes to the CCA, but opinions differ as to how this can be achieved. The reform will take years, the government will now look at producing more detailed proposals and a second consultation in 2024.

Regarding the Mortgage Charter, the FCA has introduced changes to its rules in MCOB to support the changes. The FCA is appreciative that firms may need to make system changes to support offerings under the Charter, therefore it expects lenders that signed up to the Charter to ensure they are compliant as soon as possible, but at the latest at the end of January 2024.

Later in July, the FCA published key findings from its Financial Lives survey (May 2022), the main headline being that 7.4 million people unsuccessfully attempted to contact one or more of their financial services providers in the 12 months before May 2022, with the most vulnerable in society most likely to struggle in this area. The FCA has noted that the introduction of the Consumer Duty will help to improve trust and confidence in the financial sector, as firms act to deliver good outcomes for consumers.

And finally, the FCA published details of a fine of £2.4 million for a UK-based brokerage firm for AML systems and controls failings.

Happy reading!

This month's headlines

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General

- Financial Conduct Authority (FCA) Chief Executive outlines FCA's approach to non-financial misconduct
- FCA: National Audit Office (NAO) proposes study into how FCA is adapting to regulatory change
- House of Lords Communications and Digital Committee launches inquiry into large language models
- New FCA webpages for firms with appointed representatives
- HM Treasury follows up from Edinburgh Reforms with multiple publications
- FCA feedback statement on discussion paper on competition of Big Tech on financial services industry
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- Bank of England (BoE) announces results of 2022/23 stress test of UK banking system
- House of Lords report: Artificial intelligence: Development, risks and regulation
- FCA publishes key findings of the 2022 Financial Lives survey
- FCA announces changes to authorisation application forms

Consumer credit

- Reforming the Consumer Credit Act 1974: Consultation Response

Mortgages

- FCA statement on supervisory approach to certain mortgage disclosure requirements

Data protection

- UK and Singapore sign Memorandum of Understanding (MoU) on Data cooperation
- FCA and Information Commissioners Office (ICO) clarify application of data protection rules to communications to savings customers

Complaints

- BoE, FCA and Prudential Regulation Authority (PRA) policy statement: complaints against the regulators

Investments

- There are no material updates this month for this sector

Financial crime

- Consultation published by Treasury on reforming Anti-Money Laundering (AML) and Counter Terrorist Financing (CTF) supervision
- HM Treasury: Government clamps down on unfair bank account closures

Enforcement

- FCA fines brokerage firm for cum-ex trading AML systems and controls failings

General

FCA Chief Executive outlines FCA's approach to non-financial misconduct

On 5th July 2023, the House of Commons Treasury Committee published a letter (dated 3rd July 2023) from Nikhil Rathi, Financial Conduct Authority (FCA) Chief Executive.

Mr Rathi was responding to a committee letter (14th June 2023) raising specific questions regarding the FCA's supervision of a particular firm and individual, and boarder questions concerning the FCA's wider work on non-financial misconduct.

Points of interest include:

- The 'vast majority' of regulated firms understand the FCA considers that non-financial misconduct is relevant to fitness and propriety assessments, and that it can amount to a breach of the conduct rules. The FCA intends to provide further guidance, including how non-financial misconduct should be considered within its rules, later in 2023
- To date, the FCA has prohibited seven individuals for non-financial misconduct. All but one case involved a criminal conviction or a caution. Currently, it is considering six prohibition cases involving criminal convictions for a wide range of sexual and other offences. It has two open enforcement investigations related to non-financial misconduct
- The FCA receives approximately six reports a quarter from firms regarding non-financial matters of concern. In addition, it considers criminal and civil court cases, press reports and information provided by whistle-blowers. It receives approximately 1000 whistle-blowing disclosures a year, of which around three reports a quarter relate to allegations of sexual misconduct. A dedicated, well-trained FCA team receive whistle-blowing reports. They capture the report, ensure it is considered by the correct part of the FCA and protect the whistle-blower's identity, where requested

Call to action

- Firms should review their non-financial misconduct processes and consider any updates where necessary.

Further reading

Find the letter here.

General

FCA: NAO proposes study into how FCA is adapting to regulatory change

On 6th July 2023, the FCA published the minutes of a FCA Board meeting held on 25th May 2023.

The minutes refer to a report from Nikhil Rathi, FCA Chief Executive, which detailed the following:

National Audit Office (NAO) study: The NAO has notified the FCA that it intends to carry out a study into its overall effectiveness and readiness to meet future challenges. A NAO webpage gives more information and suggests the study will be carried out in winter 2023/24.

The webpage refers to recent significant changes that have been introduced or are proposed to the FCA's regulation of the financial services sector, which includes the Financial Services Future Regulatory Framework (FRF), the Consumer Duty and the FCA's new secondary objective under the Financial Services and Markets Act 2023 (FSMA) to facilitate the international competitiveness and growth of the UK economy in the medium to long term. Technological innovations such as cryptoasset and artificial intelligence (AI) provide challenges and opportunities for financial services regulation.

The NAO study will examine how the FCA is working with others (e.g. HM Treasury) to act to meet aspects of the challenges and take advantage of the opportunities brought by recent changes.

Diversity and inclusion (D&I) discussion paper: Work on the data, and work with the PRA is ongoing. The minutes note it will be brought to the Board in 'due course'. The regulators' final policy in this area is expected to be published in 2024.

Further reading

The FCA minutes can be found here and the NAO webpage can be found here.

House of Lords Communications and Digital Committee launches inquiry into large language models

On 7th July 2023, House of Lords Communications and Digital Committee launched an inquiry and call for evidence into large language models and what needs to happen over the next one to three years to ensure the UK can respond to their opportunities and risks.

The Committee states that steps will involve evaluating the work of government and regulators, examining how well this addresses current and future technological capabilities, and reviewing the implications of approaches taken elsewhere in the world.

The call for evidence explains that large language models are a type of generative AI, which have attracted significant interest for their ability to produce human-like text, code and translations. Notable advances, including Open AI's, GPT-3 and GPT-4 are referred to, and the Committee notes that many experts say these developments represent a step change in capability.

The speed of development and lack of understanding about these models' capabilities has led to some experts to warn of a credible and growing risk of harm the Committee says.

Issues include that training datasets can contain biased or harmful content, intellectual property rights over the use for training data is uncertain and some models may develop counterintuitive or perverse ways of achieving aims.

The Committee has called for written submissions on various questions including:

- How large language models will develop of the next three years
- How adequately the government's AI white paper deals with large language models, and whether a tailored regulatory approach is needed
- How the UK's approach compares with that of other jurisdictions, notably the EU, US and China

Call to action

- The call to evidence is open for written contributions by 5th September 2023.

Further reading

The call for evidence can be found here.

General

New FCA webpages for firms with appointed representatives

On 11th July 2023, the FCA published two new webpages relating to appointed representatives.

The first webpage sets out information for firms that operate as regulatory hosts (being a principal firms that typically carries out little or no regulated activity, instead it oversees the use of its permissions by appointed representatives). The webpage explains the responsibilities of regulatory hosts. It also states the FCA will continue to scrutinise principal firms to ensure the regulatory hosting model operates and that firms operating it comply with the relevant rules.

The second webpage published details the data that principal firms must report to the FCA. The data concerns complaints and revenue relating to appointed representatives, principal firms confirming annually that their details are correct and providing information relating to new appointed representatives.

Further reading

The regulatory hosts webpage can be found here, and the data webpage here.

General

Treasury follows up from Edinburgh Reforms with multiple publications

On 11th July 2023, HM Treasury published a host of new publications as part of the Edinburgh Reforms, which were announced in December 2022, to drive growth and competitiveness in the UK financial services sector.

The Treasury publications include:

- **A delivery plan for building a Smarter Financial Services Regulatory Framework (SRF):** This is a framework for the UK for replacing retained EU law on financial services. The government states it will deliver 'significant progress' on tranches 1 and 2 of the SRF programme by the end of 2023
- **A near-final draft version of the Data Reporting Services Regulations 2023:** This will replace retained EU law related to Data Reporting Service Providers to facilitate the emergence of a UK consolidated tape
- **A response to the Treasury call for evidence on the Short Selling Regulation Review:** This sets out the next steps for replacing the SSR with a UK-tailored regulatory regime for short selling
- **A near-final draft version of the Securitisation Regulations 2023:** This will replace the version of the EU Securitisation Regulation retained in UK law
- **A response to the Treasury call for evidence on Payment Accounts Regulation:** Summarises responses received to the December 2022 consultation on Information requirements in the Payment Accounts regulations 2015
- **A response to the consultation on reforming the Consumer Credit Act 1974 (CCA):** Summarises responses received to the December 2022 consultation on reforming the CCA

Further reading

The Edinburgh Reforms can be found here.

General

FCA feedback statement on discussion paper on competition of Big Tech on financial services industry

On 12th July 2023, the FCA published FS23/4 on the potential competition impacts of big tech entry and expansion in retail financial services.

The statement follows the FCA discussion paper DP22/5 published in October 2022. The FCA received responses from a wide range of stakeholders including Big Tech firms, regulated financial services firms, trade associations, challenger firms, consumer organisations and research institutions.

Key themes that emerged from the feedback include:

- Differing Big Tech business models and strategies
- Refining the analytical framework
- Data access and data sharing
- Big Tech activity at or beyond our regulatory perimeter
- Overlaps with regulators and other regimes

The feedback statement also comments on market and product developments since the discussion paper and provides a summary of feedback received.

The FCA is keen to develop an effective competition approach for Big Tech firms in UK financial services that is coherent with the wider regulatory landscape, both in the UK and internationally. It has several market design policy initiatives underway that seek to enable effective competition in digital markets, such as open-banking and data sharing.

The FCA is not proposing any regulatory or policy change at this stage, however, by the end of 2023, a call for input will be issued on Big Tech firms as 'gatekeepers' and key drivers including the role of data asymmetry between Big Tech firms and financial services firms.

The FCA will also review its approach to supervision of Big Tech firms to improve how it monitors their activities.

Further reading

FS23/4 can be found here.

General

FCA speech: Regulatory approach to AI and Big Tech

On 12th July 2023, the FCA published a speech given by Nikhil Rathi, FCA Chief Executive, on the FCA's emerging regulatory approach to AI and Big Tech.

Points of interest from the speech include:

1. **Big Tech:** The FCA intends to issue a call for further input on the role of Big Tech firms as gatekeepers of data and the implications to the ensuring data-sharing asymmetry between Big Tech firms and financial services firms (covered in the Reg Agenda above)
2. **Market integrity and AI:** Mr Rathi warns that using AI can cause imbalances and risks affecting the integrity, price discovery, transparency and fairness of markets. The FCA expects firms to accelerate investment in fraud prevention and operational and cyber resilience as AI is further adopted
3. **Global techsprint and AI:** The FCA intends to expand the global techsprint approach to include AI risks and innovation opportunities
4. **AI sandbox:** The FCA intends to open its upcoming AI sandbox to firms wanting to test the latest innovations. In March 2023, the government announced that it would engage with regulators, including the FCA, to develop a regulatory sandbox for AI that would bring together regulators to support innovators directly and help them get their products to market
5. **Existing regulatory frameworks for AI:** Mr Rathi argues that the Consumer Duty and the Senior Managers and Certification Regime (SM&CR) provide frameworks that address many of the issues arising from AI. There have been recent calls in Parliament for a bespoke SM&CR-type regime for the most senior individuals managing AI systems

Further reading

The full speech can be found here.

BoE announces results of 2022/23 stress test of UK banking system

On 12th July 2023, the Bank of England (BoE) published a document detailing the results of its 2022/23 annual cyclical scenario (ACS) stress test of UK banks and building societies (collectively referred to as 'banks'). There is also an Annex detailing the individual bank results.

The BoE found the following:

- The major UK banks would be resilient to a severe stress scenario that included persistently higher inflation, increasing global interest rates, deep and simultaneous recessions in the UK and global economies causing materially higher unemployment, and sharp falls in asset prices
- The UK banking system would be able to withstand the severe macroeconomic scenario and support households and businesses throughout the stress. The results also support the Financial Policy Committee's (FPC) judgement that the UK banking system has the capacity to support households and businesses through a period of higher interest rates, including in the event that economic and financial conditions were to be substantially worse than expected.

The BoE notes that the stress test scenario is more severe than the 2007/08 global financial crisis and is substantially more severe than the current macroeconomic outlook. It notes that the stress test scenario is not a forecast of macroeconomic and financial conditions in the UK or aboard; it is a coherent 'tail-risk' scenario designed to be sufficiently severe and wide to assess the UK banks' resilience to a range of sever adverse shocks.

The BoE also explains that negative effect of macroeconomic shocks included in the scenario is dampened by banks' improved asset quality since the last cyclical stress test performed in 2019. This is due to increases in residential property prices, more conservative lending standards and changes in the compositions of banks' balance sheets.

Further reading

The full BoE document can be found here.

General

House of Lords report: Artificial Intelligence: Development, risks and regulation

On 28th July 2023, the House of Lords (HoL) published a report entitled 'Artificial Intelligence: Developments, risks and regulation'.

It provides a comprehensive analysis of AI, its risks and benefits, the government's approach to AI regulation, a comparison of regulatory plans in other jurisdictions, and concludes with potential lessons for the UK's regulatory approach to AI.

The report discusses a number of recent well publicised calls for rapid regulatory adaption, including the open letter from key figures in AI, science and technology (including Steve Wozniak, Elon Musk, and representatives from Google, Amazon and Microsoft), calling for a pause in powerful AI development, and the joint report 'A new national purpose: AI promises a World-Leading Future of Britain' by Sir Tony Blair and Lord Hague of Richmond.

The joint report described creating a national AI laboratory called Sentinel to research and test safe AI, and which could form the basis for both the UK and possibly an international AI regulator.

The HoL report concludes with recommendations that the UK should:

- Initially diverge from EU AI regulation but ensure its own regulatory systems allow for voluntary alignment by UK companies with EU AI regulation
- Initially align with US regulatory standards, while building coalitions with other territories via Sentinel, enabling later divergence as UK regulatory expertise matures
- Establish and AI regulator in the medium term in tandem with Sentinel

Further reading

The full HoL report can be found here.

General

FCA publishes key findings of the 2022 Financial Lives survey

On 26th July 2023, the FCA published the key findings of the 2022 Financial Lives survey.

Financial Lives is the FCA's flagship survey of UK consumers. A total of 19,145 respondents completed the 2022 survey which closed in May 2022 and provides information about consumers' attitudes towards managing their money, the financial products they have and their experiences of engaging with financial services firms.

Initial research was published on 17th May 2023.

Key findings are:

- The primary focus of the publication is to explain the importance of the Consumer Duty and how the survey results are relevant to the outcomes the FCA seeks to achieve
- 7.4 million people unsuccessfully attempted to contact one or more of their financial services providers in the 12 months before May 2022, with the most vulnerable in society most likely to struggle with this
- Less than half of UK adults or 21.9 million people, had confidence in the UK financial services industry and 36% agreed that most financial firms are honest and transparent in the way they treat them

The FCA states the Consumer Duty will require firms to act to deliver good outcomes for consumers and, in turn, help to improve trust and confidence in the financial services sector.

> 'Times like this show why it's important people get the support they need as more people are likely turning to their financial services providers for help. Our Consumer Duty will guide our ongoing work to improve the way firms provide customer support – getting through to your provider is the starting point for receiving help, so we will be working with them to improve in this area'.
>
> **Sheldon Mills**
>
> **FCA Executive Director, Consumers and Competition**

Call to action

- Firms should review the findings and consider making any improvements to processes where necessary.

Further reading

The full Financial Lives survey results can be found here.

General

FCA announces changes to authorisation application forms

On 27th July 2023, the FCA published a new webpage announcing that it is reviewing and updating its authorisations applications forms that are accessed via Connect.

The aim of the review is to make it quicker and easier for firms to apply to be authorised and help the FCA capture the information it needs.

The first form to be released will be a new Form A, which is used for Senior Management Functions (SMFs) and controlled functions applications under the Senior Managers and Certification Regime (SM&CR). This is the longest and most used form. The FCA has stated that after public testing it will be available for all types of application but will initially only be available to certain types of application.

It will be launched in 'the coming months' and includes changes that reflect industry feedback.

The FCA has improved the layout of the form, improved the help and guidance throughout and made navigation easier. Other changes include:

- A checklist of information required to complete the application, which firms should gather before starting the application
- Less duplication in the employment history section. Solo regulated firms will be able to input ten years of employment history instead of uploading a CV
- Improved data validation and pre-population to aid quicker form completion
- Integration of the statement of responsibilities (SOR) in the form, avoiding the need for a second application
- Removal of the 'send later' function

Once the FCA has completed its work on Form A, it intends to make changes to other application forms. It also confirms that it does not intend to change the regulatory data and RegData returns as part of this work.

Further reading

The new webpage can be found here.

UK and Singapore sign MoU on Data cooperation

On 28th June 2023, the Department for Science, Innovation and Technology (DSIT) and Singapore's Ministry of Communications and Information and the Smart Nation and Digital Government Office announced the signing of a Memorandum of Understanding (MoU) on data cooperation.

The MoU will commit the UK and Singapore to the following:

- Increased digital trade between the two countries and to learn from each other how data use is improving public services and government efficiency
- Establishment of a new Strategic Intergovernmental Dialogue to discuss domestic data regulation, data protection and the international data transfer
- Sharing of research and experimentation on how using data can deliver better public services and economic growth, and best practice on data management in government and between government and business
- Work to a new set of standards on publishing anonymised government datasets to improve global cooperation

There was also a second MoU signed between the governments on Emerging Technologies, which is to enhance collaboration between the countries on research into the use of emerging technologies, improving connectivity for future developments in digital communication, and aligning technical standards for the use of AI.

Both agreements build on the UK-Singapore Digital Economy Agreement signed in February 2022, and the 2020 UK-Singapore Free Trade Agreement.

Further reading

The DSIT press release can be found here.

FCA and ICO clarify application of data protection rules to communications to savings customers

On 18th July 2023, the FCA and Information Commissioner's Office (ICO) published a joint letter sent to UK Finance and the Buildings Societies Association (BSA) clarifying data protection issues in the context of requirements to provide effective communications to savings customers.

The regulators' concern that too many customers are sitting on low savings interest rates or not accessing products that may offer better value. However, some firms have queried whether data protection regulations prevent them from telling savings customers about better deals. The letter states that this is not the case and clarifies that saving providers can inform their customers of the best rates available to them, even where the customers have objected to direct marketing.

Data protection law provides people with a right to object to direct marketing. The regulators clarify that this does not prohibit firms from providing communication to their customer when requested or required by a statutory regulator, such as under the FCA's Consumer Duty, even where customers have opted out of direct marketing.

The letter refers and links to the ICO's guidance on direct marketing and regulatory communications. It explains how the Consumer Duty applied to firms' communications with their customers, in particular for the FCA's final non-handbook guidance for firms on the Consumer Duty (FG22/5), that explains how firms can use their communications to support good retail customer outcomes.

In a press release, the FCA states that it now expects firms to point customers to the best possible savings deals. The FCA will pay close attention to firms' engagement strategies to support their saving customers to achieve good outcomes.

The FCA has also written to the House of Commons Treasury Committee on the subject of banks' savings rates, explaining how the Consumer Duty will help it to ensure that banks offer fair value on their products.

Further reading

The joint letter can be found here.

Consumer credit

Reforming the Consumer Credit Act 1974: Consultation Response

On 11th July 2023, HM Treasury published a response to its initial consultation on reforming the Consumer Credit Act 1974 (CCA).

The consultation was published in December 2022 as part of the government's Edinburgh Reforms.

There were 84 responses to the consultation, all of which were supportive of change, although thoughts differ as to how reform should be achieved; whether regulation should be flexible and outcomes-based or prescriptive. Stakeholders also generally agreed that parts of the regime could be moved to FCA rules, however views differed on how far this should go.

Other points to note are:

- The majority of respondents were supportive of moving information requirements into FCA rules, though for some consumer groups this was only on the basis that the sanctions regime continued to operate in a similar manner
- A number of respondents highlighted the negative mental health impacts of the current regime for NOSIAs and Default Notices
- The consultation raised the extent to which the 'Consumer Understanding' outcome contained within the Consumer Duty could replace the need for prescriptive information requirements
- Some pieces of legislation provide some overlap in protections with the CCA, however given its specific focus on consumer credit, the CCA contains rights and protections that are not mirrored in other legislation
- Stakeholders argued that section 75 could not be replicated
- Many industry stakeholders saw unenforceability as one of the central problems with the CCA

The government will be undertaking policy development to produce more detailed proposals, with a view to publishing a second consultation in 2024.

Further reading

Read the full consultation response here.

Complaints

BoE, FCA and PRA policy statement: complaints against the regulators

On 27th July 2023, the Bank of England (BoE), FCA and PRA published a joint policy statement on complaints against the regulators (FCA PS23/12 and PRA PS10/23).

The policy statement confirms the regulators have finalised revisions to the complaints scheme. This follows a consultation process, which was launched in July 2020.

Publication of the policy statement has been delayed several times, and most recently to take account of measures in the Financial Services and Markets Act 2023 that impact the complaints scheme.

Chapter 2 of the policy statement summarises the feedback received and sets out the regulators' response to the issues raised.

In particular, the regulators have:

- Confirmed they will consider making a discretionary payment in recognition of financial loss if they have made a clear and significant error, and they are the sole or primary cause of that financial loss
- Removed the proposal that any compensatory payment relating to a complainant's financial loss will not exceed £10,000, other than in exceptional circumstance. In practice, the regulators expect that payments made under the complaints scheme will remain modest
- Increased the levels of discretionary compensatory payments for non-financial loss and provided more clarity on eligibility. The appropriateness levels will be reviewed every two years

The regulators have also published the 'revised complaints scheme'. This document is dated 1st November 2023, the date from which it will enter into force. New complaints made on and from this date will be considered under the revised scheme, and those received before that considered under the current scheme.

Further reading

The policy statement can be found here, and the 'revised complaint scheme' here.

Mortgages

FCA statement on supervisory approach to certain mortgage disclosure requirements

On 14th July 2023, the FCA released a statement on its supervisory approach to certain mortgage disclosure requirements in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).

To support the implementation of the governments Mortgage Charter, the FCA introduced changes to its rules to enable firms to allow mortgage borrowers to reduce their capital repayments (including to zero and paying interest only) for up to 6 months and fully or partly reverse a term extension within 6 months of extending the term.

The rules enable firms to vary a mortgage contract without assessing affordability.

The FCA acknowledges the urgency with which firms are seeking to deliver the Mortgage Charter commitments and that some firms' systems may not currently allow them to meet these requirements in full. It will therefore allow firms time to bring their systems into compliance where they are currently unable to provide the disclosure required under MCOB 7.6.28R, when giving effect to these two new options (MCOB 11.6.3(3)(a) and (b)).

The FCA expects lenders to have introduced a compliant approach as soon as possible, and in any event by the end of January 2024.

Call to action

- Firms who have signed up the Charter should be looking at system improvements to ensure compliance.

Further reading

The full FCA statement can be found here.

Financial crime

Consultation published by Treasury on reforming AML and CTF supervision

Consultation published by Treasury on reforming Anti-Money Laundering (AML) and Counter Terrorist Financing (CTF) supervision

HM Treasury: Government clamps down on unfair bank account closures

On 30th June 2023, HM Treasury published a consultation on the reform of the anti-money laundering (AML) and counter-terrorism financing (CTF) supervisory system, in line with a commitment in the Economic Crime Plan 2023-26.

The AML/CTF supervisory system is currently made up of three statutory supervisors: the FCA, the Gambling Commission, HMRC and 22 professional bodies supervisors (PBSs) who supervise the legal and accountancy sectors. These supervisors ensure firms and individuals comply with the Money Laundering Regulations (MLRs). They take enforcement actions if the MLRs are breached and ensure only fit and competent individuals hold management roles in regulated businesses.

The 2022 review of the UK's AML/CTF regulatory and supervisory regime concluded that while there had been continued improvements to the regime, some weaknesses in supervision may need to be addressed through structural reform.

The review is set out four possible models for a future AML/CTF supervisory system:

- **Model 1**: OPBAS
- **Model 2**:PBS Consolidation
- **Model 3**:Single Professional Services Supervisor (SPSS)
- **Model 4**: Single Anti-Money Laundering Supervisor (SAS)

The consultation gives further information on the four models and assesses them against three consultation objectives. The consultation does not include a policy preference and invites respondents' views regarding the potential benefits and non-benefits of each potential reform model.

Additionally, views have been sought on whether to expand requirements on supervisors and their regulated populations relating to sanctions compliance.

Call to action

- The consultation is open to responses by 30th September 2023.

Further reading

The consultation paper can be found here.

Financial crime

HM Treasury: Government clamps down on unfair bank account closures

On 20th July 2023, HM Treasury published a press release detailing how the government is going to clamp down on unfair bank account closures.

At the end of June 2023, a news story was emerging concerning Nigel Farage (former politician) and Coutts Bank (Coutts). Mr Farage reported that he had received a letter from Coutts stating that it had decided to stop doing business with him, with no explanation. Mr Farage stated it was due to him being a 'politically exposed person' (PEP).

After submitting a data subject access request (DSAR) to Coutts, Mr Farage received a document detailing the evidence Coutts had accumulated about him to feed back to its Wealth Reputational Risk Committee.

The main risk were detailed as:

- Reputational: Mr Farage is 'high profile' and 'actively courts controversy'
- Financial crime: due to 'alleged Russia connection'

In the wake of the row over Mr Farage's bank account, the government has stepped in to address fears that banks are terminating accounts because they disagree with someone's political beliefs.

Banks will be forced to explain and delay any decision to close an account under new rules, protecting freedom of expression. Changes will increase the notice period to 90 days, which will give customers more time to challenge a decision through the Financial Ombudsman Service (FOS) or find a replacement bank.

Banks will also be required to spell out why they are terminating a bank account, which should boost transparency for customers, and aid their efforts to overturn decisions.

These changes can be made due to new powers in the Financial Services and Markets Act 2023 (FSMA).

The changes also run alongside separate plans to clarify in legislation the requirements for PEPs, and a review into whether these are being applied proportionately by financial institutions.

The FCA will set out how they intend to conduct the review by the end of September 2023.

Further reading

The full press release can be found here.

Enforcement

FCA fines brokerage firm for cum-ex trading AML systems and controls failings

On 13th July 2023, the FCA published the final notice it had issued to Bastion Capital London Ltd, a UK-based brokerage firm that entered liquidation in June 2019.

The FCA fined Bastion £2,452,700.00 for breaching the following Principles of Business:

- **Principle 3:** by having inadequate systems and controls in place to identify and mitigate the risk of being used to facilitate fraudulent trading and money laundering in relation to business concerning the Solo Group (being four authorised entities that purported to provide clearing and settlement services as custodians to clients within a closed network)
- **Principle 2:** by not exercising due skill, care and diligence in applying its anti-money laundering (AML) policies and procedures, and in failing to properly assess, monitor and mitigate the risk of financial crime in relation to business concerning the Solo Group.

The FCA found that, during the relevant period of 29th January 2014 and 29th September 2015, Bastion executed purported OTC equity trades to the value of approximately £49.03 billion in Danish equities and £22.48 billion in Belgian equities on behalf of certain off-shore companies (Solo Clients) introduced to it by the Solo Group.

The Solo Clients were controlled by a small number of individuals, some of whom worked for the Solo Group, without apparent access to funds to settle the transactions. The purported trades were carried out in a way that was highly suggestive of financial crime, appearing to allow the arranging of withholding tax reclaims in Denmark and Belgium. Bastion received commission of £1.55 million.

This is the fifth case brought by the FCA relating to cum-ex trading.

Further reading

The final notice can be found here.

Dates for the diary

2023	Oversight of Critical Third Parties
2023	FCA and PRA Consultation Paper on Diversity, Equity and Inclusion
H1 2023	Review of the UK's AML/CTF regulatory and supervisory regime
H1 2023	Regulation of Buy Now Pay Later (BNPL)
2022-23	Continuous FCA evaluation of how firms treat Vulnerable Customers
H1 2023	Transforming data collection building on Digital Regulatory Reporting
30 Jun 2023	Deadline for ending reliance on US dollar LIBOR
July 2023	Proposed Consumer Duty implementation period ends, and rules and guidance come into force for existing and open products
13 Jul 2023	Consultation closes on CP23/13 - Strengthening protections for borrowers in financial difficulty
Q3 2023	Final findings of Credit Information Market Study
End 2023	Remaining UK Green Taxonomy Technical Screening Criteria to be finalised
Q4 2023	Deadline for principals to prepare and approve the first self-assessment of compliance with the new appointed representatives' rules
March 2024	Synthetic sterling 3-month LIBOR rate cease
July 2024	Proposed Consumer Duty implementation period ends, and rules and guidance come into force for closed products
2024	Second Consumer Credit Act Consultation to be published with more detailed proposals
17 Jan 2025	The EU's Draft Digital Operational Resilience Act (DORA)

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