Reg Agenda

December 2023 | BULLETIN

What's inside...

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- Help to Stay - Wales scheme launched
- Financial Services Regulatory Initiatives Grid: November 2023

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A TECH MAHINDRA COMPANY

Welcome to Target's Reg Agenda

Foreword by

ASHLEY SEYMOUR-SKINNER

Target Group
Chief Risk Officer

This month we welcome Ashley Seymour-Skinner as Target's new Chief Risk Officer!

November was another busy month in the regulatory world. At the beginning of the month, the Financial Conduct Authority's (FCA's) Director of Cross Cutting Policy and Strategy gave a speech on Consumer Duty and what comes next. Nisha Arora reminded firms that the Consumer Duty is not a 'once and done' activity, it needs to become part of who the firm is and run across the whole organisation.

Firms need to review implementation plans and check they have done what they set out to achieve; they need to continuously consider data and the monitoring process and be able to show the FCA that they are delivering good consumer outcomes for all different consumer groups. The FCA also published two new webpages on the Consumer Duty and stressed to firms of importance to prepare for the next implementation deadline of 31st July 2024 for closed products and services.

In light of the current cost-of-living crisis, the Welsh Government launched the Help to Stay – Wales scheme to help Welsh homeowners who are in, or are facing, financial difficulty paying their mortgage stay in their homes. The scheme offers a second charge shared equity loan, which will help homeowners to pay down any mortgage arrears, and reduce the outstanding balance of their mortgage, to reduce the ongoing monthly payments to an amount that is comfortably affordable. The scheme went live on 7th November 2023.

The new Regulatory Initiatives Grid for November 2023 was published by the Financial Services Regulatory Initiatives Forum. The Grid sets out details of the regulatory initiatives relevant to the financial services sector planned for the next two years. This edition of the Grid also includes a new Smarter Regulatory Framework section which details the initiatives to repeal and replace existing retained EU law requirements.

Finally, we end on a successful FCA prosecution of two individuals who made fraudulent applications for mortgages worth around £3 million!

Happy reading!

This month's headlines

Target Servicing Ltd accepts no responsibility for any loss or damage of whatever nature arising in any way out of the use of, or inability to use, this bulletin or from any error or omission in information contained in this bulletin.

List of abbreviations used throughout the Reg Agenda:

AI Artificial Intelligence
AML Anti-Money Laundering
BoE Bank of England
CTF Counter Terrorism Financing
EBA European Banking Authority
FCA Financial Conduct Authority
FOS Financial Ombudsman Service
FSCS Financial Services Compensation Scheme
ICO Information Commissioners Office
ICT Information and Communication Technology
IRSG International Regulatory Strategy Group
PRA Prudential Regulation Authority
PSR Payment Systems Regulator
OFSI Office of Financial Sanctions Implementation
TCFD Task Force on Climate-related Financial Disclosures

General

- FCA Speech: Consumer Duty - not once and done
- FSCS update on 2023/24 compensation levy and 2024/25 forecast: November 2023
- EBA speech on operational resilience and development of DORA framework
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- Government responds to AI governance challenges in House of Commons Committee interim report
- FCA speech on building firm foundations for healthy cultures
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- UK Finance on impact of AI in financial services
- FCA call for input on data asymmetry between Big Tech and financial services firms
- FCA guidance consultation on anti-greenwashing rule
- Leasehold and Freehold Reform Bill introduced to Parliament
- Financial Services Regulatory Initiatives Grid: November 2023

Consumer credit

- FCA secures contract changes for buy-now-pay-later customers as more consumers use the product

Mortgages

- Help to Stay - Wales scheme launched

Data protection

- FCA update on progress of Synthetic Data Expert Group
- King's Speech 2023: data protection implications
- UK Information Commissioner and European Data Protection Supervisor sign Memorandum of Understanding

Complaints

- There are no material updates for the sector this month

Investments

- FCA Portfolio Letter to Wealth Management and Stockbroking firms
- FCA multi-firm review on AFM's embedding of guiding principles in ESG and sustainable investments funds

Financial crime

- FCA multi-firm review on anti-fraud controls and complaint handling firms, focusing on APP fraud
- Online Fraud Charter 2023 announced

Enforcement

- FCA successfully prosecutes two individuals for fraudulent mortgage applications

General

FCA Speech: Consumer Duty - not once and done

On 1st November 2023, the Financial Conduct Authority (FCA) published a speech by Nisha Arora, FCA Director of Cross Cutting Policy and Strategy, on Consumer Duty and what comes next.

Points of interest from the speech include the following:

- The work for firms to embed the Consumer Duty has only just begun. The Duty needs to become part of who the firm is and run across the whole organisation from the Board to front-line delivery, from product design to communications and customer support. The implementation of the Duty will remain top priority for the FCA and how it makes financial services markets work well
- Firms need to maintain momentum in implementing the Consumer Duty
- Firms need to ensure and be able to show the FCA that they are delivering good consumer outcomes for different groups of consumers, including those in vulnerable circumstances
- Firms should go back and review implementation plans and check that they have made the changes they set out to make
- Firms should consider data and monitoring processes
- Mr Arora reminds firms of the requirement that, at least once a year, a firm's board or equivalent governing body, must review and approve an assessment of whether the firm is delivering good outcomes for its customers
- The annual report will be part of the evidence the FCA uses to assess a firm's ongoing compliance with the Duty. Firms will need to provide it, and the management information (MI) behind it, on request

Alongside the speech, the FCA published two new webpages relating to the Consumer Duty:

1. A webpage detailing the FCA's resources relating to the introduction of the Duty, including news, speeches, podcasts and portfolio letters
2. A webpage providing examples of how the FCA is using the Duty

Call to action

- The Consumer Duty will apply to closed products and services from 31st July 2024. The FCA stresses the need for firms to start preparations for implementation in good time.

Further reading

The full speech can be found here, and the FCA Consumer Duty webpage here.

General

FSCS update on 2023/24 compensation levy and 2024/25 forecast: November 2023

On 9th November 2023, the Financial Services Compensation Scheme (FSCS) published the November 2023 edition of its Outlook newsletter.

In the letter, the FSCS confirms that:

- The 2023/24 compensation levy remains at £270 million, as forecast in May 2023 and it does not expect to need to request any additional levies from firms during this financial year. Any surplus in each class will be carried forward and used to offset the levy payable by firms in 2024/25
- The initial levy forecast for 2024/25 is £415 million. This figure is an early indication and subject to change. It is based on the FSCS' expected compensation costs totalling approximately £457 million during 2024/25

It explains that, although the levy is expected to increase in 2024/25 due to the lower surpluses carried over from the previous financial year, compensation costs remain relatively stable. For the most recent three years, including the forecast for 2024/25, compensation is between £400 million and £460 million.

It will continually review its forecasting and keep firms informed of any major developments that may impact the levy.

The next edition of Outlook will be published in Spring 2024.

Further reading

The November 2023 edition can be read here.

General

EBA speech on operational resilience and development of DORA framework

Further reading

The full speech can be found here.

On 15th November 2023, the European Banking Authority (EBA) published a speech (dated 10th October 2023) given by Jose Manuel Campa, EBA Chair, on operational resilience in the financial services sector.

In the speech, Mr Campa talks about digitalisation trends in financial services. Around half of EU banks (covering both corporate and retail segments) have reported that most of their customers (75% to 100%) primarily use digital channels for daily banking activities. More than 70% of EU banks use artificial intelligence (AI) in some areas of activity. An increased use of chatbots or similar solutions has also been noticed.

In addition, 65% of EU banks have established partnerships with Big Tech firms, mainly to facilitate the distribution of financial and other services.

Mr Campa goes on to talk about the current information and communication technology (ICT) and third-party provider (TPP) landscape in the sector. Under the Regulation on digital operational resilience for the financial sector ((EU) 2022/2554) (DORA), the European Supervisory Authorities (ESAs) are developing 'level 2' regulatory texts. Relating to this work, they have carried out a high-level exercise to obtain a preliminary overview of the provision of ICT services to EU financial entities by ICT providers. The exercise was carried out based on information provided on a best-effort basis by a sample of EU financial entities, focusing on the services they receive from ICT providers.

The exercise identified around 15,000 ICT providers directly serving EU financial entities. The providers offer a large range of ICT services, the most common being software and application services, ICT consultancy and direct management processes, and cloud computing services.

The exercise also highlighted a highly concentrated market, despite the high number of ICT TPPs identified and the number of ICT services provided. Frequently, the suppliers providing services for operation of the most critical functions are not replaceable or there are no contingency arrangements for alternative suppliers, which exacerbates concerns of the level of concentration risk in the sector. A high degree of interconnectedness and interdependencies between ICT providers was also observed.

The ESAs are using the information obtained in developing their new supervisory framework under DORA (for example) in determining the criteria as to whether a supplier is 'critical' or 'essential'.

General

House of Lords Liaison Committee recommends creation of new Financial Services Regulation Committee

On 15th November 2023, the House of Lords Liaison Committee published its 6th report of the 2022-23 session.

The report briefly outlines the UK's post-Brexit financial services regulatory framework and the changes being made by the government and the UK financial services regulators, including under the Financial Services and Markets Act 2023 (FSMA 2023). Among other things, FSMA 2023 provides for select committees in each of the House of Commons and the House of Lords (joint committee) to scrutinise consultations issued by the financial services regulators.

The committee considers that:

- Given the importance of financial services to the UK economy, there is a need for enhanced security, not only for individual consultations, but also of financial services regulation generally
- In this regard, it is particularly important to take account of the evolution of the regulatory framework following the UK's withdrawal from the EU

The committee therefore recommends the establishment of a new seasonal committee in the House of Lords, to be known as the Financial Services Regulation Committee. In addition to scrutinising consultations under FSMA 2023, it recommends that this new committee's remit extends to considering the regulation of financial services generally.

The committee acknowledges the potential for a new committee's work to overlap with the work of existing House of Lords committees, including the Economic Affairs Committee and the Industry and Regulators Committee. It considered the option of the work in this area being undertaken by a sub-committee of one of these existing committees, but ultimately concluded that the case was stronger for a new freestanding committee. It believes this will enable a clear and dedicated focus on financial services regulation and provide the House of Lords with a committee with a distinct identity.

The committee also notes that, as with the working relationships between existing select committees, dialogue between the respective staff and chairs can ensure that the work of each committee is complementary, rather than duplicative.

The new committee will undertake the detailed technical work of scrutinising documentation, together with thematic policy-focused work. Additional specialist and focused resource is therefore required.

A related press release notes that the committee's recommendation will now go to the floor of the House of Lords for approval.

Further reading

The 6th report can be found here.

Government responds to AI governance challenges in House of Commons Committee interim report

Further reading

The full response can be found here.

On 20th November 2023, the government responded to the interim report of the House of Commons Committee setting out its response to the recommendations made and confirming progress against actions set out in the AI regulatory white paper.

In response to concerns raised in the interim report around regulatory gaps and the need for a central co-ordinating function, the government confirms that it has established a central AI risk function within the Department for Science, Innovation and Technology (DSIT) to monitor AI risks.

It notes that the AI and Digital Hub has also been established within the Digital Regulation Cooperation Forum (DRCF) to pilot a multi-regulator advisory service.

In a detailed response to each recommendation made in the interim report, the government also confirms:

- Greater emphasis on digital skills within schools and opportunities for adult retraining in STEM subjects such as AI, cyber security and data analytics
- That no AI specific legislation will be introduced immediately, and that DSIT will work with other government departments to develop the UK regulatory approach, including risk monitoring activity to co-ordinate mitigations
- The members of the Frontier AI Taskforce (now renamed as the AI Safety Institute) and its terms of reference. The government confirms its remit is to enable the safe and reliable development and deployment of advanced AI systems
- Continued involvement in international AI safety initiatives including the G7 Hiroshima AI Process, the UN's global digital compact and international standards development
- Its attendance at future AI summits in South Korea and France following the hosting of the AI Safety Summit at Bletchley Park

The government considers that its activities in developing domestic policy and international engagement demonstrate a commitment to deal with the 12 challenges set out in the interim report. It acknowledges the need to continue a close consultation with industry and civil society to ensure it responds appropriately to advances in AI technology.

The government will provide an update to its regulatory approach in its response to the AI regulation white paper consultation in due course.

General

FCA speech on building firm foundations for healthy cultures

On 20th November 2023, the FCA published a speech by Sheree Howard, FCA Executive Director of Risk and Compliance Oversight, on building firm foundations for healthy cultures.

Points of interest include the following:

Firms must ask themselves not only whether they have the right plans, but also whether they have clear sight of the breadth of risks they face, and the controls needed to manage them. A key current concern for the FCA is concentration risk. There is, in addition, significant risk when firms concentrate on their own business and its culture and practice, without appreciating the bigger picture

Different types of risk can transform. What may start as conduct, operational or reputational risk can swiftly transform into liquidity or solvency risk. In the event of liquidity or solvency challenges, there are often then new conduct, operational or reputational challenges to manage. Firms that have not updated their stress assumptions in the last 18 months should do so

Risk culture is integral to an organisation's core purpose. Individuals should ask themselves what they are frightened of asking their firm, and why? There should be no 'no-go' zones. For a healthy, purposeful culture to thrive, firms must create an atmosphere of fearlessness, not fear

A culture that tolerates non-financial misconduct is unlikely to be one in which individuals feel able to speak up and challenge decisions, or one in which they believe that concerns will be considered independently and fairly. It also raises questions about the firm's decision making and risk management. An organisation with a lack of diversity, equity and inclusion (DEI) is at a much greater risk of not having a healthy culture

A tighter fiscal climate can lead to heightened pressure on performance and profitability. However, a challenging environment must not lead to diminishing standards, shortcuts to vital processes, a reduction in the control framework or changes in the investment or behaviour of a firm's lines of defence, through short-term commercial interests being prioritised over regulatory obligations

Good lines of defence protect a firm. The three lines of defence should be separate but cohesive

Call to action

- The FCA hugely values the second and third lines of defence, which should play a key role in assisting senior management with their oversight of business activities.

Further reading

The full speech can be found here.

General

FCA speech on how firms can flex their power through culture and conduct

Further reading

The full speech can be found here.

On 23rd November 2023, the FCA published a speech by Emily Sheppard, FCA Chief Operating Officer and Executive Director of Authorisation, on how firms can flex their power through culture and conduct.

Points of interest include:

- **In focusing on the Consumer Duty, firms must also consider how their culture can help drive better outcomes.** Poor culture in firms can lead to issues. The FCA's proposed guidance on which it is currently consulting makes clear that misconduct such as bullying and sexual harassment pose a risk to healthy firm cultures, and seeks to help ensure firms can take decisive and appropriate action when such behaviours occur
- **To succeed, the right policies, controls, processes and incentives are necessary, but not sufficient on their own.** Cascaded strategies and purposes must align to both positive action and consequence management when necessary
- **Second- and third-line functions can help senior management functions (SMFs) achieve the goal of fostering an inclusive culture** throughout by holding all leaders to account for their firm's culture, not just the individual in whose statement of responsibilities it sits in
- **Transparency remains a crucial component.** It must run through to the top to enable good governance and ensure boards have the information they need to set firms' cultural and strategic direction
- **The FCA is constantly evaluating and adapting to developments in technology to deliver innovative and efficient regulation.** Currently, it is considering the potential of machine learning and artificial intelligence (AI). This includes how it can securely adopt large language models (LLMs) or other forms of generative AI. To do this, the FCA is ensuring it is building strong controls or governance, including appropriate levels of human-to-technical validation. Areas that could see benefits in the future include coding support, summarisation and deep retrieval search capabilities
- **The FCA appreciates the broader debates from its regulatory work on AI**, such as the efficacy of AI use and the guardrails that are needed for it to be applied appropriately. It is assessing how it is applied across the industry and what it means for consumers, markets and competition

General

UK Finance on impact of AI in financial services

On 23rd November 2023, UK Finance published a report on the impact of AI in financial services.

The report, which was written in partnership with Oliver Wyman, sets out the findings of a survey conducted among UK Finance member organisations representing various institutions in the UK financial services sector.

The survey covered the state of AI adoption, its emerging applications and the risks it poses to financial services. The key findings highlighted in the report include:

UK financial institutions see a substantial opportunity in AI. 90% of survey respondents are currently leveraging predictive AI in back-office functions and reporting tangible benefits. More than 60% of respondents believe generative AI has the potential to deliver significant cost savings and improvements to operational effectiveness

Harnessing the potential of AI technology will necessitate a re-evaluation of business processes, employee skills and staffing considerations. As a highly regulated sector, financial institutions are proceeding carefully with their adoption of AI. Currently, more than 70% of generative AI use cases are in the proof of concept or pilot stage. Getting a return on investment will be reliant on data quality and seamless integrations into existing systems, a process that could take three to five years

There is a steep learning curve and numerous questions remain unanswered at present. The advent of generative AI has identified additional risks and underlines the challenge of needing to procure models from external providers. Most financial institutions consider they are well equipped to identify, monitor and mitigate the risks, with 60% already leveraging existing risk management capabilities and adjusting their frameworks to include generative AI

Respondents support the UK's flexible approach to AI regulation, based on principles and outcomes, rather than prescriptive rules on the application of technology. However, 65% of respondents regard uncertainty with the direction of regulation as a top concern for the adoption of AI in the UK. In particular, there are open policy questions about ensuring AI guidance has clear scope, balancing the firms' information needs against the IP concerns of third-party providers, and the harmonisation of cross-sectoral and cross-jurisdictional regulation (especially in the context of emerging international approaches).

Call to action

- The report includes a 'conclusion and outlook section', which sets out suggested actions for firms for AI adoption and summaries the current policy and regulatory position.

Further reading

The full report can be found here.

General

FCA Call for Input on data asymmetry between Big Tech and financial services firms

On 24th November 2023, the FCA published a Call for Input on potential competition impacts from the data asymmetry between Big Tech and firms in financial services.

This follows the FCA's discussion paper and feedback statement on the competition impacts of Big Tech in four retail sectors:

- Payments
- Deposit taking
- Consumer credit
- Insurance

One theme of the feedback statement was that the asymmetry of data and data sharing mechanisms between Big Tech and financial services firms could have significant adverse implications for how competition develops in financial services. Respondents suggested that Big Tech firms have data advantages from their core digital activities, which can be combined with financial data from sources facilitated by data sharing initiatives. This combined data can also be leveraged through their advanced analytics and AI technologies to impact how competition develops.

Data asymmetry arises because financial services firms are unable to access Big Tech firms' datasets which currently sit outside of data sharing initiatives, whereas financial services data could be accessed by Big Tech firms.

The FCA's call for input is intended to explore the feedback in more detail, with the FCA stating that it is seeking more focused information and evidence to assess the risk of the market developing in a way where Big Tech firms gain entrenched market power because of data asymmetry. It also wants to better understand the potential benefits of concentration of customer data in Big Tech firms.

Depending on its findings, the FCA's actions may include supporting competition and innovation where it can bring most benefits, using its powers to conduct a market study, taking enforcement action under the Competition Act 1998 and referring specific issues to the Competition and Markets Authority (CMA) for it to consider in the context of the prospective pro-competitive regime for digital markets.

Call to action

- The FCA invites responses by 22nd January 2024. It intends to report back in Q2 2024.

Further reading

The Call for Input can be found here.

General

FCA guidance consultation on anti-greenwashing rule

On 28th November 2023, the FCA published a guidance consultation (GC23/3) on proposed guidance relating to its new anti-greenwashing rule.

The proposed guidance is designed to help firms better understand the FCA's expectation under the anti-greenwashing rule (once it comes into force) and other existing, associated requirements, when making claims about the sustainability of a product or service.

Tackling greenwashing is a regulatory priority for the FCA and as part of this it is introducing an anti-greenwashing rule in the ESG sourcebook. The rule forms part of a package of measures that the FCA will implement through its new sustainability disclosure requirements (SDR) and investment labels regime.

The FCA set out its final rules and guidance on the regime in PS23/16, published on 28th November 2023.

The proposed guidance is set out in Annex 1 to GC23/3. It will apply to all FCA-authorised firms who make sustainability-related claims about their products and services, including firms that approve financial promotions for unauthorised persons, for communication in the UK.

In summary, the FCA proposes that firms should take the following guidance into account when making sustainability claims. Sustainability references should be:

- Correct and capable of being substantiated
- Clear and presented in a way that can be understood
- Complete and not omit or hide important information. They should also consider the full lifecycle of the product or service
- Fair and meaningful in relation to any comparisons to other products or services

The FCA proposes that the guidance comes into force on 31st May 2024 alongside when the anti-greenwashing rule will come into force.

Call to action

- Comments can be made on GC23/3 until 26th January 2024.

Further reading

GC23/3 can be found here and PS23/16 here.

Leasehold and Freehold Reform Bill introduced to Parliament

On 27th November 2023, the Leasehold and Freehold Reform Bill was introduced to Parliament.

The Bill includes a variety of measures that support the government's aim to make leasehold property ownership fairer.

The measures were announced in the King's Speech on 7th November 2023.

The Bill includes, amongst other things:

- Increasing the statutory lease extension term to 990 years (up from 90 years for flats and 50 years for houses)
- Removing the two-year ownership requirement for lease extensions and freehold enfranchisement
- Requiring greater transparency over service charges and setting a maximum time and fee for the provision of management information by the freeholder when a leaseholder is selling their property

The government has stated that further amendments will be introduced to the Bill as it progresses through Parliament to expand the protections given by the Bill, including a ban on the creation of new leasehold houses in England and Wales other than in exceptional circumstances.

Further reading

The Bill can be found [here](#).

General

Financial Services Regulatory Initiatives Grid: November 2023

On 30th November 2023, the Financial Services Regulatory Initiatives Forum published the Regulatory Initiatives Grid for November 2023.

The purpose of the Grid is to set out details of regulatory initiatives relevant to the financial services sector that are planned for the next 24 months.

For each initiative, the Forum provides:

- Details of the lead authority
- Key milestones
- The indicative impact
- The likely timetable for key developments

Where appropriate, the Grid also specifies where the timings of the initiative have changed since the previous edition and where a new initiative has been added.

In response to stakeholder feedback, the Forum has changed the format of the Grid to include a new Smarter Regulatory Framework (SFR) section, which provides more information on initiatives to repeal and replace existing retained EU law requirements (REUL). Some of the initiatives in this section were in other sections of previous editions of the Grid, but have now been moved to ensure they are all in one place.

At its next meeting in Spring 2024, the Forum will look at how the Grid has developed since the first edition was published in 2020 and will continue to consider how trends, such as how the growing focus on AI is reflected in future Grids. Noting feedback received on the aims and purpose of the Forum, it will also discuss whether any wider strategic changes would be beneficial.

The Forum intends to publish the next edition of the Grid in the first half of 2024.

Further reading

The full Grid can be found here.

FCA update on progress of Synthetic Data Expert Group

On 1st November 2023, the FCA published an update on the work of the Synthetic Data Expert Group (SDEG).

Set up in March 2023, the SDEG brings together 21 experts from across financial services, the public sector, data and technology and consumer groups.

The SDEG intends to run until November 2024, aiming to provide practical and tangible synthetic data insights for practitioners and policymakers by:

- **Producing a report on using synthetic data in practice:** The report will explore lessons learned and good practice with use cases including:
  - Fraud detection and controls
  - Credit scoring
  - Anti-money laundering (AML)
  - Open banking
- **Creating a collaborative framework between the public and private sector:** Currently in the early stages of development, the framework is likely to focus on some of the identified priority use cases, such as fraud, but may change depending on market needs and priorities of the SDEG

The SDEG intends to share more information on the framework in 2024, and invites feedback on its progress.

Further reading

The full published update can be found here.

Data protection

King's Speech 2023: data protection implications

On 7th November 2023, King Charles III delivered his first King's Speech to both Houses of Parliament, outlining the government's legislative plans for the forthcoming parliamentary session (2023-2024), which will take the country to the next general election.

Of particular interest to data protection practitioners will be the carry-over motion of the Data Protection and Digital Information (No 2) Bill, which will be renamed to Data Protection and Digital Information Bill (DPDI Bill). It aims to modernise the UK's data protection regime and maximise post-Brexit freedoms to boost the economy.

Proposals include:

- Easing the burden of compliance with the Data Protection Act 2018 and the UK GDPR, whilst maintaining high data protection standards
- Tackling issues such as the proliferation of nuisance calls and repetitive 'cookie pop-ups'
- Clarifying and improving rules around using personal data for scientific research, fostering a home for world class research and development
- Establishing a framework for secure digital verification services
- Enabling 'smart data' schemes across the economy
- Ensuring better delivery of health and adult social care, law enforcement, security and other government services
- Maintaining high international data protection standards, while ensuring that it is easier to strike new data bridges with trusted international partners
- Updating the enforcement powers and accountability for the Information Commissioner's Office

The DPDI Bill is due to have its report stage and third reading on a date yet to be announced. Of ongoing concern will be the potential impact any changes may have on the validity of the EU-UK adequacy decision.

Further reading

The King's Speech can be found here.

Data protection

UK Information Commissioner and European Data Protection Supervisor sign Memorandum of Understanding

On 8th November 2023, the ICO and European Data Protection Supervisor (EDPS) signed a Memorandum of Understanding (MoU) which confirmed their plans to build on existing collaboration.

Additionally, the MoU confirms plans to:

- Share experiences and exchange best practices on data protection policies, education and training programmes
- Co-operate on specific projects of interest
- Share information or intelligence to support their regulatory work
- Promote dialogue among data protection authorities and other digital regulators

The MoU also lists other ways in which the ICO and EDPS may collaborate, which include implementing joint research projects and joint publications, secondment of staff and bilateral meetings every six months or as mutually decided between the ICO and EDPS.

The MoU serves as a statement of intent which explains how the ICO and EDPS will co-operate and share expertise. The ICO's webpage explains that part of its legal function is to maintain an international role and work with other regulatory bodies.

The ICO and EDPS will continue to monitor the operation of the MoU and review it at either's request.

Further reading

The full MoU can be found here.

Consumer credit

FCA secures contract changes for buy-now-pay-later customers as more consumers use the product

On 31st October 2023, the FCA published a research note exploring the use of unregulated buy-now-pay-later (BNPL) credit (also known as Deferred Payment Credit (DPC))

The research on BNPL confirms that there is a great deal yet to understand about how and why consumers use it. Using findings from the Financial Lives 2022 survey and Financial Lives cost of living recontact survey, the FCA explored customers' use of DPC in the UK and made a number of key findings. The analysis will help to inform the FCA's position on BNPL credit. This type of credit is not currently regulated; however, it is expected to become regulated in the future.

The FCA published a press release, confirming it had secured further changes to potentially unfair and unclear contract terms for unregulated BNPL firms.

The FCA used its powers under the Consumer Rights Act 2015 to secure changes to potentially unfair and unclear contract terms in this sector. It was concerned that PayPal and QVC customers were at risk of harm due to how some of the contract terms were drafted.

As a result of the continued focus in this area, both firms have voluntarily made their continuous payment authority terms easier to understand. Additionally, PayPal has made terms relating to what happens when a customer cancels the purchase funded by the loan clearer and fairer.

Call to action

- The FCA has issued a reminder to all firms to ensure that their consumer contracts comply with all the requirements of consumer protection legislation that applies to their business.

Further reading

Find the research note here, and press release here.

Mortgages

Help to Stay - Wales scheme launched

On 7th November 2023, the Help to Stay - Wales scheme was launched by the Welsh Government.

Help to Stay – Wales offers support for Welsh homeowners who are in, or facing, financial difficulty in paying their mortgage. The support is offered in the form of a shared equity loan.

An enhanced type of Mortgage Rescue scheme, Help to Stay – Wales is intended to work alongside existing mortgage interventions in the Mortgage Charter, and provide an option for vulnerable homeowners in Wales who are struggling to afford their mortgage payments.

The purpose of the scheme is to keep applicants in their homes, by offering them an equity loan to pay down their existing mortgage arrears and reduce their outstanding mortgage balance, thereby reducing the ongoing monthly mortgage payments to an amount they can comfortably afford.

The Equity Loan Term is as follows:

- The loan would be offered for up to 15 years
- The initial period (3-5 years) is interest and repayment free
- After the 5-year interest free period, the customer will move to an interest rate that tracks the Bank of England base rate +2% and has no early repayment charges
- Repayment of capital upon the end of the 15th year

The Development Bank of Wales will administer the scheme.

The equity loan will be registered as a second charge on the property; therefore, the customer will need to engage with their first charge Lender to consent to the second charge/Deed of Priority. This means that any other charges against the property will need to be cleared for the second charge to be registered.

The customers are also required to complete the Help to Stay – Wales application, obtain a RICS red book valuation and engage with an independent mortgage advisor.

Further reading

The full details of the scheme, including eligibility criteria, can be found here.

Investments

FCA Portfolio Letter to Wealth Management and Stockbroking firms

FCA multi-firm review on AFM's embedding of guiding principles in ESG and sustainable investments funds

FCA Portfolio Letter to Wealth Management and Stockbroking firms

On 8th November 2023, the FCA issued a Dear CEO letter to a number of Wealth Management and stockbroking firms.

The letter is driven by the Consumer Duty changes and highlights that firms in this sector have lost significant sums of money to scams and fraud, as well as exposed customers to inappropriately high-risk or complex investments, combined with poor value products and services.

The FCA emphasises that they are going to be more assertive, intrusive, proactive and data driven. They will be conducting more short notice and unannounced visits on firms where it is deemed necessary and the FCA will be significantly increasing use of its intervention powers.

The letter focuses on two key priority harm areas:

1. This is a particularly high-risk sector for enabling and/or participating in financial crime. Firms must understand their financial crime risks, not carry out 'tick box' compliance exercises and ensure relevant Senior Managers have the required experience, skills and independence.
2. Firms are reminded of the expectations under the Consumer Duty. Products that are too complicated for retail customers to understand go against the spirit of the Consumer Duty and firms must take steps to test consumer understanding.

The above examples are two key areas, but the FCA has wider expectations that firms should consider their Client Money and Asset requirements, have regard to ESG, improve diversity, equality and inclusion and ensure there is no place for non-financial misconduct.

The message from the FCA is strong, and is aimed to be a stark reminder to firms to raise the quality of the service they provide.

Call to action

- The letter is for information purposes only, but firms in this sector should heed the stern warnings presented by the FCA.

Further reading

The Dear CEO letter can be found here.

Investments

FCA Portfolio Letter to Wealth Management and Stockbroking firms

FCA multi-firm review on AFM's embedding of guiding principles in ESG and sustainable investments funds

FCA multi-firm review on AFM's embedding of guiding principles in ESG and sustainable investments funds

On 16th November 2023, the FCA published the findings from its supervisory work that looked at how Authorised Fund Managers (AFMs) comply with existing regulatory requirements and expectations on the design, delivery and disclosure of ESG and sustainable investment funds.

The review was a follow-up to the Dear Chair letter the FCA sent to the chairs of AFMs in July 2021. That letter gave guidance on the FCA's existing requirements through a set of guiding principles that set out FCA expectations in this area.

Among other things, the FCA found:

- Despite some products having a reference to ESG or sustainability in their name, some did not have an explicit ESG or sustainability objective (although ESG and sustainability outcomes were typically reflected in the investment policy and/or strategy)
- The design of AFMs stewardship approaches generally did not meet FCA expectations. It was often difficult to identify the nature of stewardship activities from fund literature alone and identify clear examples of progress from engagement
- In some instances, fund holdings appeared inconsistent with a fund's ESG or sustainability objectives. Some AFMs were not able to explain how these holdings were consistent with the ESG or sustainability characteristics of the fund

The FCA states that it expects AFMs to review their ESG and sustainable fund ranges and assess whether their disclosure material meets the requirements of FCA rules, and the expectations set out in the Guiding Principles letter.

Further reading

The full findings can be read here.

Financial crime

FCA multi-firm review on anti-fraud controls and complaint handling firms, focusing on APP fraud

FCA multi-firm review on anti-fraud controls and complaint handling firms, focusing on APP fraud

Online Fraud Charter 2023 announced

On 7th November 2023, the FCA published a webpage setting out the key findings from its review of anti-fraud controls and complaint handling in firms, including authorised push payment (APP) fraud.

The FCA selected a risk-based sample of firms to review, including firms of different types, size and risk profile. It carried out a high-level evaluation of their approach to fraud risk management, which focused on APP fraud.

The review found that firms can do more to strengthen their systems designed to detect and prevent fraud, with many firms failing to do enough to ensure they are delivering good customer outcomes under the Consumer Duty.

The FCA expects firms to use its findings to inform what more they can do to detect, manage and reduce fraud and losses more effectively. This includes all payment service providers (PSPs) regularly evaluating their approach to identifying the fraud risks they and their customers are exposed to.

In summary, PSPs should address the concerns outlined in the review findings by ensuring that they:

- Have effective governance arrangements, controls and management information (MI) to detect, manage and reduce APP fraud and losses
- Treat customers fairly, including when they complain, and deliver consistently good outcomes to customers who are the victims of fraud. This includes firms ensuring they are doing enough to enable customers to report fraud easily and promptly, communicate clearly with customers and provide appropriate support to customers who display characteristics of vulnerability
- Ensure they are doing enough to mitigate the risks of money mule accounts, on which the FCA published its review findings in October 2023

Following the review, the FCA is working with firms to strengthen their approach.

Tackling financial crime, including APP fraud, continues to be a priority for the FCA. The FCA states that it will continue to monitor how payment firms are meeting its expectations to slow the growth of APP fraud cases and losses, as well as fraud more generally and to put the needs of customers first.

Further reading

The FCA webpage can be found here.

Financial crime

Online Fraud Charter 2023 announced

On 30th November 2023, the government announced the Online Fraud Charter 2023.

It is a voluntary agreement between the government and the technology sector to reduce fraud on their platforms and services. 11 major tech companies including TikTok, Amazon, Google, Instagram, LinkedIn and Microsoft have signed the Charter.

The Online Fraud Charter is being hailed as a 'world's first' initiative to combat scams, fake adverts and romance fraud. The Charter will call on the firms to introduce a number of measures to better protect users, including verifying new advertisers and promptly removing fraudulent content.

There will also be increased levels of verifications on peer-to-peer marketplaces and people using online dating services. The companies have pledged to implement the measures which apply to their services within six months.

The measures are:

- Blocking: Deploy measures to detect and black fraudulent material
- Reporting: Have a simple and quick route to report fraudulent material
- Takedowns: Take action against fraudulent content and users straight away
- Advertising: Deploy measures to protect people from fraudulent adverts
- Law enforcement: Have dedicated liaisons who will respond to law enforcement requests
- Intelligence sharing: Engage with initiatives to quickly share information about frauds
- Transparency: Provide information about fraud risks on platforms, and what is being done to address them
- Communications: Deliver simple messaging to support the public to recognise and avoid online fraud
- Horizon scanning: Contribute to horizon scanning exercises to stay ahead of the threat

The Joint Fraud Taskforce (JFT), chaired by the Home Office Minister for Security will hold companies to account for delivering the actions.

Nicole Stevenson
Financial Crime Manager

"The volume of scams and frauds committed in recent years have skyrocketed due to the increasing popularity of social media platforms and online shopping, fraud is now the most common crime in the UK. The majority of consumers used to be able to easily spot when a deal seemed too good to be true but in today's climate criminals are more sophisticated, making these frauds more likely to be successful.

It is encouraging to see some of the UK's largest tech providers committing to tackle and reduce fraud on their platforms, offering further protection for all consumers but especially those most vulnerable."

Further reading

Read more about the Charter here.

General | Data protection | Complaints | Consumer credit
Mortgages | Investments | Financial crime | Enforcement

Dates for the diary | Terms and conditions of use

Enforcement

FCA successfully prosecutes two individuals for fraudulent mortgage applications

On 15th November 2023, the FCA published a press release announcing that it has brought a successful prosecution against two individuals for making fraudulent applications worth around £3 million.

One of the individuals (Mr A) was found guilty of 11 charges of fraud by false representation (contrary to section 1 of the Fraud Act 2006) following the FCA's prosecution. At an earlier hearing, Mr A pleaded guilty to two offences of arranging and advising on regulated mortgages without being authorised by the FCA (contrary to section 23 of FSMA 2000). At the beginning of the trial (19th July 2022), Mr A's co-defendant, Mr B a chartered accountant, pleaded guilty to fraud by false representation.

The FCA commenced criminal proceedings against the two individuals in April 2021. Between 1st January 2015 and March 2018, Mr A gave advice to customers looking to take out residential mortgages without the necessary FSMA authorisation.

In 11 cases, he also dishonestly inflated the mortgage applicant's income in their application to the lender. Mr A charged the customer a fee, which he would then pay in cash to Mr B, who created false self-employment and employment documentation to support mortgage applications for customers with insufficient income.

Mr B also produced multiple documents purporting to have been issued by HMRC and containing false income figures, which in each case were sent to the lender by Mr A. With Mr A's knowledge, Mr B also claimed to employ two of the applicants to create a false impression of their income, producing false contracts of employment and payslips in support, which Mr A also forwarded to lenders.

As a result of the fraud, lenders granted a mortgage to several applicants on a false basis, placing lenders at greater risk of loss. Both individuals will be sentenced on 23rd February 2024.

Steve Smart, FCA Joint Executive Director of Enforcement and Market Oversight, said that the verdict demonstrates the FCA's commitment to tackling fraud and sends a warning to anyone involved in similar criminal activities that the FCA will pursue them, so they feel the full force of the law.

Further reading

The full press release 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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