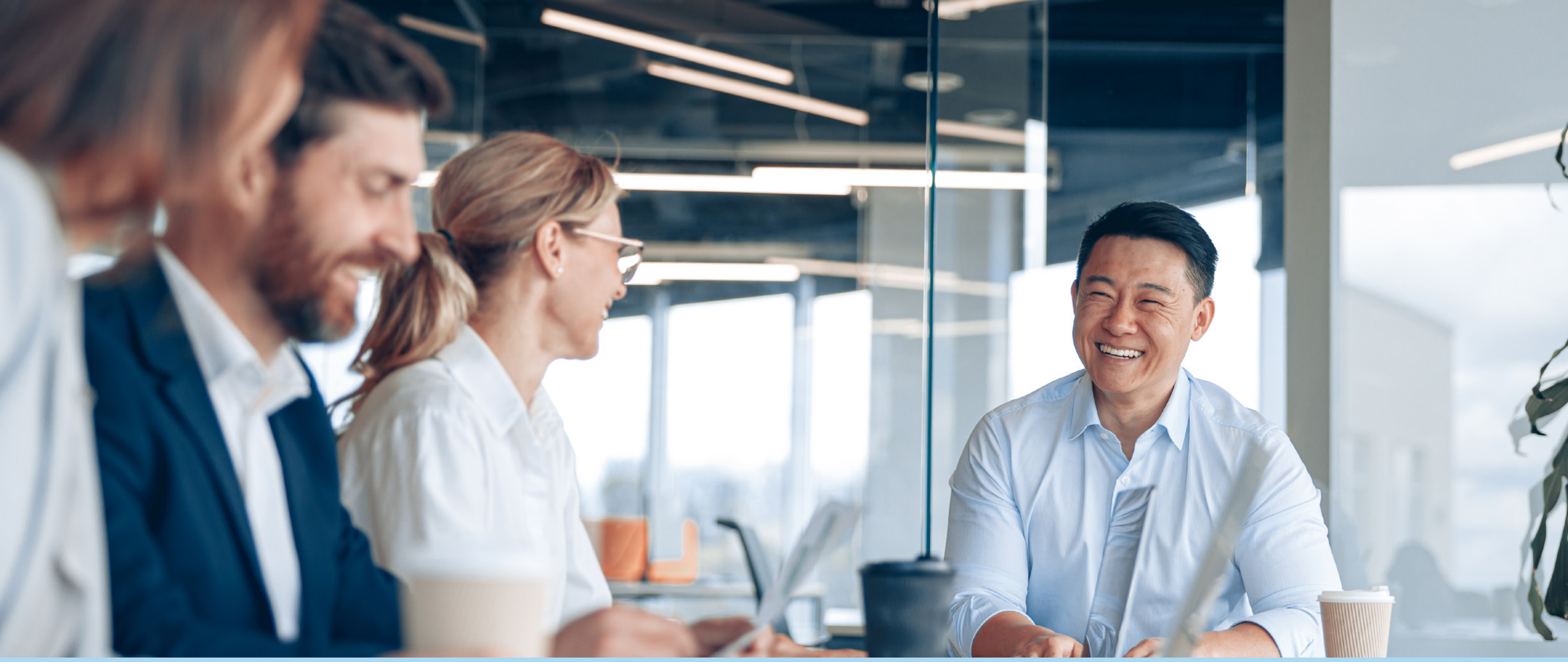

Reg Agenda

January 2024 | BULLETIN

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- FCA multi-firm review of retail banking Consumer Duty implementation
- FOS publishes Quarterly Complaints Data Q2 2023/24

target

A TECH MAHINDRA COMPANY

Welcome to Target's Reg Agenda

Foreword by

ASHLEY SEYMOUR-SKINNER

Target Group
Chief Risk Officer

Happy New Year and welcome to the latest edition of Target's Reg Agenda.

The end of the year is normally relatively quiet; however, December 2023 was a busy month!

A joint paper was released from the Bank of England, Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) detailing expectations for Critical Third Parties (CTPs). No firms have yet been designated as CTPs, however the Consultation Paper includes an assessment of whether a third party would meet the test for being designated as a CTP. If a firm is designated as a CTP, they would need to meet and comply with eight proposed Operational Risk and Resilience Requirements in respect of their material services.

December marked a year since the Edinburgh Reforms were announced by the Chancellor of the Exchequer. The Economic Secretary for the Treasury stated in a speech that the government has delivered 22 of the 31 reforms, however the Treasury Committee announced in a report that it that was disappointed with the limited impact of the Reforms.

The FCA published a new webpage regarding its multi-firm review of retail banking Consumer Duty implementation. The FCA emphasises that firms should evaluate their products, services and processes against the Duty rules and guidance on an ongoing basis, allowing them to really put consumers at the heart of business and deliver good outcomes for customers. Firms should also consider the review for the implementation of the Duty for closed products and services on 31st July 2024.

The Financial Ombudsman Service published its quarterly complaints data analysis for July to September 2023. The data shows there was an increase in complaints during the period, and there was a higher percentage of complaints upheld by the FOS. Current accounts remain the most complained about product, however, there has been a concerning rise in complaints relating to financing or insuring motor vehicles. As a result, the FOS have included a deep-dive analysis of complaints in this area.

Finally, we end on a reprimand from the Information Commissioners Office (ICO) to the Bank of Ireland UK. Between 2018 and 2020, Bank of Ireland UK made mistakes on more than 3,000 of its customers credit profiles. These mistakes would have had a negative impact on the customers affected and meant the Bank of Ireland UK was reprimanded for infringements under two Articles of the UK GDPR.

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
JROC Joint Regulatory Oversight Committee
NAO National Audit Office
PRA Prudential Regulation Authority
PSR Payment Systems Regulator
OFSI Office of Financial Sanctions Implementation
TCFD Task Force on Climate-related Financial Disclosures

General

- Treasury Committee publishes report on UK retail Central Bank Digital Currency
- FCA publishes update on the cash savings market
- Joint Regulator Consultation - Operational resilience: Critical Third Parties to the UK financial sector
- FCA publishes consultation on access to cash
- The Edinburgh Reforms – One year later
- NAO reports on how FCA is adapting to regulatory change
- Joint Committee of ESAs publishes multiple consultations regarding DORA
- HM Treasury response to call for proposals on measuring success of new FCA and PRA secondary objective
- FCA multi-firm review of retail banking Consumer Duty implementation
- JROC publishes update on next phase of open banking in the UK
- Cyber resilience good practice for firms

Consumer credit

- FCA publishes MS19/1: Credit Information Market Study

Mortgages

- There are no material updates for the sector this month

Data protection

- There are no material updates for the sector this month

Complaints

- HMT publishes The Financial Services and Markets Act 2000 (The Ombudsman Scheme) Regulations 2024 – Draft SI and Policy Note
- FOS publishes Quarterly Complaints data Q2 2023/24

Investments

- FCA publishes its 2-year update to the Consumer Investments Strategy and Advice Guidance Boundary Review DP23/5

Financial crime

- FCA announces updated MoU with OFSI
- Updated HM Treasury advisory notice on money laundering and terrorist financing controls in high-risk third countries

Enforcement

- Bank of Ireland UK reprimanded for inaccurate data on customers' accounts

General

Treasury Committee publishes report on UK retail Central Bank Digital Currency

On 2nd December 2023, the House of Commons Treasury Committee published 'The digital pound: still a solution in search of a problem?' report, with formal minutes relating to the report.

The report sets out the Treasury Committee's views on a potential retail central bank digital currency (CBDC). It follows the Bank of England's (BoE's) March 2020 discussion paper and February 2023 consultation, in partnership with HM Treasury, on the risks and benefits of a UK CBDC and potential design of a retail 'digital pound'.

The design for the CBDC proposed by the BoE is for a 'platform model' in which the BoE provides the core public infrastructure and issues the digital pounds, which would be recorded in a 'core ledger'.

The BoE and HM Treasury have now progressed to the 'design phase' of the digital pound, which is expected to run to 2025/26, during which time they will invest further in the policy and technical development of the proposed model for a digital pound.

There will subsequently be a decision on whether to build a digital pound, which will depend on the findings from the design phase, and on how the payments landscape evolves in the UK and abroad in the coming years.

If a decision is taken to proceed with building a digital pound, it could be launched in the second half of the decade.

Further reading

The full Treasury report can be found [here].

General

FCA publishes update on the cash savings market

On 6th December 2023, the FCA published its review of the cash savings market, setting out an action plan to ensure that banks and building societies are passing on interest rate rises to savers appropriately, communicating with customers more effectively and offering better savings rate deals.

The FCA's next steps include:

- Continuing to identify and challenge firms that are taking too long to react to the most recent base rate change and monitoring firms' approaches to providing fair value for on-sale and off-sale savings products
- Working closely with firms to ensure their fair value assessments (FVAs) are fit for purpose, following a request of nine firms to provide FVAs for their lowest paying (on-sale) easy access savings accounts
- Continuing to challenge firms that are not consistently meeting the voluntary industry agreement of completing a minimum of 85% of cash ISA to cash ISA transfer requests within seven working days and monitoring the industry's progress against the new target of 90% of cash ISAs being completed within seven working days
- Reviewing the effectiveness of firms' plans to prompt customers in low-paying savings accounts to consider alternatives with better rates

Further reading

The full news article can be found here.

Joint Regulator Consultation - Operational resilience: Critical Third Parties to the UK financial sector

On 7th December 2023, a joint paper between the FCA, PRA and Bank of England set out proposed rules and expectations for Critical Third Parties (CTPs).

Classification as a CTP is designated by HM Treasury and at the point of the paper being published, no firms have yet to be given this classification.

The second section of the Consultation Paper includes an assessment of whether a third party would meet the test for being designated as a CTP.

- HMT may consult each of the regulators before designating a third party as a CTP. In practice, this means regulators will recommend firms to HMT based on their analysis of data
- Recommendations will be based on their assessment of the potential impact that a failure in, or disruption to, these third parties' services could have on the stability of, or confidence in, the UK financial system
- Firms already subject to regulation and supervision by one or more of the regulators are unlikely to be recommended if the services that they provide are subject to a similar level of regulation and oversight that delivers at least the same outcomes to their proposed oversight regime
- CTPs are expected to account for a very small number of firms, so only systemically important third parties will be included
- Consideration will be given as to whether there are a lack of alternative providers for the services, and if there could be difficulties or risks in migrating those services

For those firms who are classified as CTPs, the regulators have proposed eight Operational Risk and Resilience Requirements that CTPs would be required to comply with in respect of their material services.

The consultation will close on 15th March 2024 and feedback should be sent to the BoE email address within the Consultation Paper.

A further consultation is expected by the PRA and BoE before the Policy Statement with final rules is published. At the same time, the FCA is expected to publish a statement on the use of disciplinary powers over CTPs.

Further reading

The full consultation can be found here.

FCA publishes consultation on access to cash

On 7th December 2023, the FCA published a consultation CP23/29: Access to Cash.

Through the Financial Services and Markets Act 2023 (FSMA 2023), the FCA is tasked with 'seeking to ensure reasonable provision' of cash deposit and withdrawal services for personal and business current accounts across the UK. This includes access to both notes and coins, and access that is free of charge for consumers with personal current accounts.

This consultation sets out proposals to establish a new regulatory regime, using the new powers given to the FCA under the FSMA 2023. The proposed rules will require banks and building societies designated by the government to assess and fill gaps, or potential gaps, in cash access provision that significantly impact consumers and businesses.

The proposed new rules and guidance go further than the existing voluntary scheme by requiring all designated firms, acting individually or (where permitted) through a coordinating body to:

- Develop a more comprehensive cash assessment process that is more responsive to a wider range of local needs
- Publish assessment outcomes and make processes transparent
- Respond to a wider range of trigger events to undertake a cash assessment in a local area
- Meet set timeframes for delivery of additional cash access services identified by a cash access assessment. This will prevent unreasonable delays, reducing the cost burden on consumers and businesses that can arise from limited access to cash in their local area

Further reading

Consultation CP23/29 can be found here.

General

The Edinburgh Reforms - One year later

The 8th December 2023 recognised one year since the Chancellor of the Exchequer set out his plans to reform the UK financial services.

The day was marked by a speech from the Economic Secretary to the Treasury, Bim Afolami. In this speech, it was announced that the government has delivered 22 of the 31 reforms. The government and the FCA were also announced to be publishing a policy paper as part of the joint Advice Guidance Boundary Review (covered here in the Reg Agenda).

As part of the speech, Bim Afolami said:

> "My number one priority in this role is to deliver on The Edinburgh Reforms. The reforms have shown the UK's dedication to fostering a sensible, innovative and robust financial landscape – over the past year we've made significant strides towards creating an environment that supports economic growth, openness, and the well-being of savers."

On the same day however, the Treasury Committee published a more sombre report, announcing it was disappointed with the limited impact of the reform programme.

Analysis by the Treasury Committee finds that six of the actions marked as 'delivered' by the Government are not yet complete and a further six of the reforms should not be considered as reforms as they relate to publishing a document or welcoming a consultation.

For other changes which could be classified as reforms, the Committee are sceptical of the changes, for example a planned reform of the Investment Manager Exemption which is deemed to have no economic impact.

> 'We welcome many of the changes as logical and sensible measures. We do, though, question the validity of claims that welcoming consultations, establishing reviews or publishing documents should be considered reforms.
>
> The Edinburgh Reforms were given considerable fanfare last December but, 12 months on, the lack of progress or economic impact has left them feeling like a damp squib.'
>
> **Harriett Baldwin**
> **The Chair of the Treasury Committee**

Further reading

The speech can be found here, and the Treasury Committee response can be found here.

General

NAO reports on how FCA is adapting to regulatory change

On 8th December 2023, the National Audit Office (NAO) published a report (dated 29th November 2023) following a study that examined how the FCA is responding to changes in its regulatory powers and remit, and to wider developments in the financial services sector.

The NAO concludes that the FCA has responded to the major changes to the financial services regulatory framework by initiating a series of reforms designed to help it meet the government's ambition for the sector to be technologically advanced, globally competitive and to act in the interest of customers. It has also made changes to improve on past regulatory failures. This includes implementation of a multi-year strategy with a focus on outcomes, together with the work needed to support its new responsibilities.

The NAO also notes that the FCA is attempting a significant amount of change on a number of fronts, all at the same time, which brings risks. Its recent high staff turnover has been disruptive and while it is still working on the transformation programme it started in 2020, it must now also respond to its new role under FSMA 2023. The FCA must complete its work on optimising its use of data, assessing whether it is achieving the outcomes it seeks, with the ability to direct resources to where they have the most impact. It must also be clear on which of the activities it is monitoring internally are its priorities. If it can do this, it will be well placed to show that it can act in an agile and targeted way.

The NAO makes four recommendations for the FCA:

- To work with HM Treasury and other stakeholders to review the effectiveness of the new accountability arrangements
- By autumn 2024, to plan how to make changes to provide clarity in its reporting of its performance
- By December 2024, to ensure it has adequate operational processes to manage the scale of change that is needed
- By September 2024, to develop and maintain a long-term plan for the needs of its workforce

The NAO notified the FCA in summer 2023 that it intended to carry out the study.

Further reading

The full report can be found here.

General

Joint Committee of ESAs publishes multiple consultations regarding DORA

On 8th December 2023, the Joint Committee of the European Supervisory Authorities (ESAs) published multiple consultation papers related to draft regulatory technical standards (RTS), implementing technical standards (ITS) and guidelines under the regulation on digital operational resilience act for the financial sector (DORA).

The publications consist of consultation papers on:

- **Draft regulatory technical standards:** to specify the elements which a financial entity needs to determine and assess when subcontracting ICT services supporting critical or important functions as mandated by Article 30(5) of Regulation (EU) 2022/2554
- **Joint guidelines:** on the estimation of aggregated annual costs and losses caused by major ICT-related incidents
- **Draft regulatory technical standards:** on the harmonisation of conditions enabling the conduct of the oversight activities under Article 41(1) points (a), (b) and (d) of Regulation (EU) 2022/2554
- **Draft regulatory technical standards:** on the content of the notification and reports for major incidents and significant cyber threat and determining the time limits for reporting major incidents and Draft Implementing Technical Standards on the standard forms, templates and procedures for reporting and notifications
- **Draft Joint Guidelines:** on the oversight cooperation and information exchange between the ESAs and the competent authorities under Regulation (EU) 2022/2554
- **Draft regulatory technical standards:** specifying elements related to threat led penetration tests

The committee also published an introductory note with an overview of the consultations.

The ESAs expect to submit the draft standards and guidelines to the European Commission by 17th July 2024.

The consultations relate to the second set of policy products required under DORA. The committee published consultations on the first set in June 2023.

Call to action

- The deadline for responses is 4th March 2024.

Further reading

The introductory note can be found here, which has links to the consultation papers.

General

HM Treasury response to call for proposals on measuring success of new FCA and PRA secondary objective

On 8th December 2023, HM Treasury published a formal response to its call for proposals on measuring success in relation to the secondary growth and competitiveness objectives for the FCA and the PRA.

The purpose of HM Treasury's call for proposals, which was published in May 2023, was to seek views on what additional metrics the FCA and PRA should publish to track progress and support scrutiny of their work to embed and advance their new secondary growth and competitiveness objectives.

In the response, HM Treasury announced that the FCA and the PRA intend to publish a range of metrics relating to:

Operational efficiency and management information: including data on numbers of decisions, refusals and withdrawals; time taken for new authorisations, variations, changes in control and senior management; firm satisfaction with regulator and regulator FTE head count

International competitiveness: including the number of new entrants and exits from the UK market with regulator appropriate breakdown and firm population data

Regulatory burden: including costs to businesses data; number of data requests; deadlines for firms to respond and 'Satisfaction on proportionality, effectiveness and how regulator actions affect attractiveness of UK'

Policy and implementation: this is a 'dashboard' showing which stage of consultation or implementation initiatives are at

Digital and innovation: including information on regulatory initiatives designed to foster innovation; and two additional metrics for the FCA regarding the sandbox programme and pathways

The response sets out details of the metrics that each of the FCA and PRA intend to publish. HM Treasury states that the lists do not include metrics that would require the regulators to make significant new data requests of firms and consequently the increased reporting expectations for the regulators should not increase firms' regulatory burden.

To note

- The FCA and PRA expect to publish the first editions of new metrics as part of the next editions of their regular quarterly reporting, or by the first report on the new secondary growth and competitiveness objectives by summer 2024, or where appropriate, in their 2023/24 annual reports.

Further reading

The full response can be found here.

General

FCA multi-firm review of retail banking Consumer Duty implementation

On 14th December 2023, the FCA published a new web-page setting out the findings of its retail banking Consumer Duty multi-firm work.

The Consumer Duty came into force on 31st July 2023 for current (on sale) products. The review looked at actions firms had taken for customers in financial difficultly (CiFD), dealing with bank accounts of deceased or incapacitated customers, fraud and security breaches, business current accounts and/or mortgages for debt consolidation.

The review findings identify the following areas for improvement:

- **Business current accounts (BCA):** The FCA noted that reviews of BCAs varied between firms and wish to remind firms that the Duty also applies to SME customers in line with the approach in the FCA Handbook. It would also expect firms to be able to identify BCA customers in vulnerable circumstances to the same standard as they would personal customers
- **Mortgages used for debt consolidation:** Where firms had considered that products could be used to consolidate debt, the FCA saw examples of improved processes for monitoring changes to customer circumstances across the product's lifetime. A limited number of firms had clear communication plans to support customers throughout the product lifecycle beyond that offered to customers who were not using mortgage products to consolidate debt

The FCA is also reminding firms that their boards must, at least annually, review and approve an assessment of whether the firm is delivering good outcomes for its customers which are consistent with the Duty.

Firms should expect to be asked for the results of their monitoring and their board reports. This information, as well as the information that the FCA already gathers from firms and other sources of data, will be used to assess them against the duty to identify and tackle harmful processes.

Call to action

- Firms need to ensure they have the appropriate MI and can evidence the outcomes their customers are receiving.

Further reading

The FCA webpage can be found here.

JROC publishes update on next phase of open banking in the UK

On 19th December 2023, the Joint Regulatory Oversight Committee (JROC) published a paper titled 'Update on actions to enable the next phase of open banking in the UK'.

In April 2023, JROC identified a roadmap of 29 actions that it states will progress open banking in a three-phased delivery approach over the next two and a half years.

The roadmap categorised each of the 29 actions into five key themes:

- Levelling up availability and performance
- Mitigating the risks of financial crime
- Ensuring effective consumer protection if something goes wrong
- Improving information flows to third-party payment service providers (TPPs) and end users
- Promoting additional services, using non-sweeping variable recurring payments (VRPs) as Phase 1 of the rollout

The publication also provides an update on progress made since April 2023.

JROC has also published a response to the Variable Recurring Payments Working Group's blueprint for rolling out non-sweeping VRP (i.e. payments between a customer and a business). This seeks to ensure that consumers and businesses can benefit from innovative, flexible payment methods across a range of different sectors.

The blueprint recommends payments to regulated utilities, regulated financial services and central and local government as the first step in creating wider uses of VRP and open banking payments.

Further reading

The full update can be found here, and the VRP response here.

Cyber resilience good practice for firms

On 19th December 2023, the Bank of England, PRA and FCA published their annual CBEST thematic report for 2023.

The report is intended to inform the sector on findings and lessons learned from the CBEST programme, which assesses the cyber resilience of systemic financial institutions through live testing performed in their corporate networks.

The 2023 thematic findings highlight the importance of building a strong foundation of 'cyber hygiene': foundational practices that prevent many common cyber incidents. These include practices like training and awareness, timely maintenance of assets, detection capability and robust authentication.

The report's findings cover the following areas:

Identity and access management: Weak or absent access management for critical assets makes unauthorised access to critical information, services and resources more likely

Staff awareness and training: Staff are central to any organisation's ability to operate securely. Without sufficient training, employees could cause accidental or intentional damage to the confidentiality, integrity or availability of information assets.

Secure configuration: Appropriately configured IT assets and systems can prevent unintended or unauthorised misuse of critical assets

Network security: Weaknesses in networks make unauthorised access to sensitive data and systems more likely

Incident response and security monitoring: Gaps in monitoring, logging and detecting malicious activity mean incidents are not contained and threats actors are not eradicated from the network

Data security: Protecting the confidentiality, integrity and availability of critical data is integral to the safety and soundness of important business services

Disruptions from cyber-attacks can impact financial stability, cause harm to consumers and other market participants, or disrupt market confidence. Firms and financial market infrastructures (FMIs) which demonstrated high maturity in cyber security were more likely to disrupt the efforts of the most sophisticated or persistent attackers.

Call to action

- Firms and FMIs should read the CBEST thematic report and consider embedding the findings into their cyber strategies.

Further reading

The full report can be found here.

HMT publishes The Financial Services and Markets Act 2000 (The Ombudsman Scheme) Regulations 2024 - Draft SI and Policy Note

On 5th December 2023, HM Treasury published a policy note on the Financial Services and Markets Act 2000 (The Ombudsman Scheme) Regulations 2024. A draft statutory instrument (SI) was published alongside the note.

Section 63 of the Financial Services and Markets Act 2023 (FSMA 2023) amends FSMA 2000 to give HM Treasury the power to make regulations to specify the description of persons that the Financial Ombudsman Service (FOS) is able to charge fees.

HM Treasury is not able to exercise this power to enable the FOS to charge complainants, meaning that it will remain the case that consumers cannot be charged for bringing complaints to the FOS.

As set out during the passage to FSMA 2023, HM Treasury intends to exercise this power to make regulation to allow the FOS to charge case fees to claims management companies (CMCs) and other relevant professional representatives bringing cases to the FOS on behalf of complainants.

The draft Regulations have been laid before Parliament under paragraph 15(3) of Schedule 17 of FSMA, for approval by resolution of each House of Parliament. In this way, if Parliament approves the instrument, once laid, HM Treasury will set the scope of who the FOS can charge fees to.

The government intends to finalise draft regulations ahead of introducing them in Parliament following the FOS Plans and Budget 2024/25 consultation closing.

Further reading

The Policy Paper can be found here.

Complaints

HMT publishes The Financial Services and Markets Act 2000 (The Ombudsman Scheme) Regulations 2024 - Draft SI and Policy Note

FOS publishes Quarterly Complaints data Q2 2023/24

FOS publishes Quarterly Complaints data Q2 2023/24

On 14th December 2023, the FOS published its quarterly complaints data analysis, covering the period between July and September 2023.

Overall, there was an increase of 8,246 complaints during the period, compared with the same quarter of 2022 (46,716 vs. 38,470).

There was also a higher percentage of upheld complaints by the FOS during this period (37% vs. 34%).

The highest complained about product remains 'current accounts' however three of the top five products related to financing or insuring motor vehicles, with Hire Purchase, Car/motorcycle insurance and Conditional sale (motor) all making the top five.

As a result, a deeper-dive analysis of complaints relating to financing and insuring motor vehicles has been included by the FOS.

Firms should continue to analyse FOS complaint data alongside their own trends to understand where there may be discrepancies, and firms involved with financing or insuring motor vehicles should pay close attention to the FOS analysis this quarter as this is an area of concern for the FOS.

Further reading

The FOS webpage with further analysis can be found here.

Consumer credit

FCA publishes MS19/1: Credit Information Market Study

On 5th December 2023, the FCA published its Final Report of the Credit Information Market Study. This follows up on the interim report published in November 2022.

The report proposes changes to the current system grouped under four key themes:

- Industry governance
- Data quality
- Consumer awareness and engagement
- Competition and innovation

As part of the changes, a new industry body called the Credit Reporting Governance Body (CRGB) will be formed.

There will be mandatory data sharing between designated Credit Reporting Agencies (CRAs), a common data reporting format, streamlined consumer access to credit information and other associated changes.

The changes require flexibility and agile industry governance arrangements, which will allow for future proofing. The growth of digital products and AI were both cited as examples of up-and-coming areas of evolution that may impact credit reporting.

The next step will be for the FCA to publish an initial Consultation Paper which is due to be published by the end of 2024.

The governance changes currently have an interim working group in place, and this is expected to complete its necessary work in nine months, at which point the CRGB will be formed and some of the other remedies progress.

Further reading

The report can be found on the FCA's webpage here.

Investments

FCA publishes its 2-year update to the Consumer Investments Strategy and Advice Guidance Boundary Review DP23/5

On 8th December 2023, the FCA published an update to the Consumer Investments Strategy from 2021.

Alongside the update, a new discussion Paper "DP23/5: Advice Guidance Boundary Review – proposals for closing the advice gap" has been published.

In the strategy update, the FCA has listed the changes made in the last year, as well as work proposed in the next 12 months and longer-term plans.

Data is also provided which shows year-on-year economic data. Firms may be interested in comparing the data to their own analysis. A couple of key metrics include:

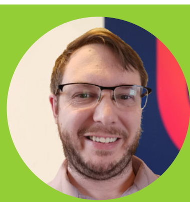
- Vulnerability levels relating to customers with high-risk investments has increased
- Investments lost to scams and fraud has decreased compared to last year, but is still higher than 2020/21

The Discussion Paper published alongside the strategy highlights an existing gap with the way advice is provided to consumers. Firms can currently provide information and guidance by explaining the characteristics of a product, but without a view as to what a consumer should do. Qualified financial advisors can provide bespoke 'personal recommendations' to consumers, which is helpful but there are fees for this service which consumers are shown to be less willing to pay.

There is, however, a middle-ground which has yet to be fully explored. The FCA proposes three solutions:

1. Further clarifying the 'advice boundary' by giving firms guidance as to what can be classified as information and guidance without being considered a personal recommendation
2. A new regulatory framework that uses information to suggest what people in the same target market would do, without going so far as to give a bespoke recommendation tailored for that consumer
3. Simplifying the advice regime so as to only cover relevant information about a specific consumer need, without looking holistically at the customer's full circumstances

The Discussion Paper is open until 28th February 2024. All responses will also be shared with the HM Treasury.



Simon Randell
Compliance Business Partner

"Whilst the Discussion Paper will be particularly of interest to investment firms, the balance of providing information that does not cross that line into 'advice', or a personal recommendation is a challenge many customer-facing staff face, so the findings of this discussion paper may of wider interest to firms".

Further reading

The 2-year update can be found here, and the DP23/5 Discussion Paper can be found here.

Financial crime

FCA announces updated MoU with OFSI

On 1st December 2023, the FCA published a Memorandum of Understanding (MoU) between the FCA and the Office of Financial Sanction (OFSI). This updates the MoU dated April 2019.

The MoU sets out arrangements of co-operation and the exchange of relevant information between the FCA and OFSI in carrying out their respective functions.

The MoU notes that the FCA obtains information from its activities which may be relevant to OFSI's work and OFSI obtains information from performing its functions which may be relevant to the FCA's work.

For the purposes of this MoU, relevant information includes, but is not limited to:

- Information relating to suspected or actual sanctions breaches identified by OFSI's competencies, which suggest weaknesses in the FCA-supervised firm's systems and controls
- Information relating to suspected or actual sanctions breaches identified by the FCA that fall within OFSI's competencies, which the FCA has reason to believe that the OFSI may not be aware of
- Information relating to suspected to actual breaches of financial sanctions or relevant maritime services sanctions identified by either Party, where there is reason to believe that joint investigations would benefit enforcement of those sanctions
- Any information the FCA discloses to OFSI under the provisions of relevant legislation
- Personal data, which may include information relating to individuals who have been involved in a suspected or actual breach of sanctions that fall within OFSI's competencies
- Asset freeze notification submitted to the OFSI, and designated persons reports submitted to the OFSI in each case which relate to or were submitted by an FCA-supervised firm
- Any information that could be used for intelligence purposes

Further reading

The full MoU can be found here.

Updated HM Treasury advisory notice on money laundering and terrorist financing controls in high-risk third countries

On 4th December 2023, HM Treasury updates its Money Laundering Advisory Notice: High-Risk Third Countries.

The Advisory Notice includes changes made by the Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) (No 2) Regulations 2023 (SI 2023/1306) that came into force on 5th December 2023 and substitutes the list of high-risk third countries specified in Schedule 3ZA of the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs) with a new list.

This list will continue to align with both the Financial Action Task Force's (FATF) 'Jurisdictions under increased monitoring' and its 'High-risk jurisdictions subject to a call for action'.

Schedule 3ZA consolidates these lists into a single list of countries, as all countries included in either of FATF's lists have significant shortcomings in their anti-money laundering (AML), counter terrorist financing (CTF) and counter-proliferation financing controls. Each of the countries specified is now subject to the requirement of enhanced customer due diligence under the MLRs.

The full list of high-risk third countries now comprises of:

- Barbados
- Bulgaria
- Burkina Faso
- Cameroon
- Croatia
- Democratic People's Republic of the Congo
- Gibraltar
- Haiti
- Iran
- Jamaica
- Mali
- Mozambique
- Myanmar
- Nigeria
- Philippines
- Senegal
- South Africa
- South Sudan
- Syria
- Tanzania
- Turkey
- Uganda
- United Arab Emirates
- Vietnam
- Yemen

Albania, Cayman Islands, Jordan and Panama are no longer specified as high-risk third countries.

Further reading

The full Advisory Notice can be found here.

Enforcement

Bank of Ireland UK reprimanded for inaccurate data on customers' accounts

On 15th December 2023, the ICO issued a press release detailing that it had issued Bank of Ireland UK with a reprimand for mistakes made to more than 3,000 customers' credit profiles.

Bank of Ireland UK sent incorrect outstanding balances on 3,284 customers' loan accounts to credit reference agencies (between 2018 and 2020). This inaccurate data could have potentially led to these customers being unfairly refused credit for mortgages, credit cards or loans, or granted too much credit on products they were potentially unable to afford.

Due to the complex nature and different factors contributing to credit scoring, it would be impossible to determine the actual damage caused to each customer. However, the ICO concluded it was reasonable to assume that the inaccurate data sent by Bank of Ireland UK to credit reference agencies would have had a negative impact on the customers affected.

Reported to the ICO in March 2021, Bank of Ireland UK was found to be in breach of data protection law and were reprimanded under the following infringements of the UK GDPR:

- Article 5 (1) (d) which states personal data shall be accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay (accuracy)
- Article 5 (2): the controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 (accountability)

> 'Mistakes made by financial institutions can have far-reaching consequences on people's everyday lives. Some customers affected could have been refused mortgages, loans or credit cards, as well as being unable to get mobile phone contracts, insurance policies or sign up with utility companies. The mistake made by the Bank of Ireland UK could have potentially caused misery for thousands of people.'
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> **Natasha Longson**
> **ICO Head of Investigations**

Further reading

The full reprimand can be found here.

Dates for the diary

Feb 2024	Regulatory Framework for approval of financial promotions
15 Mar 2024	Operational Resilience: CP23/30 Critical Third Parties to the UK financial sector consultation closes
March 2024	Synthetic sterling 3-month LIBOR rate ceases
H1 2024	Tailored Support Guidance (TSG) - Policy Statement
H1 2024	ESG Governance, Remuneration, Incentives and Training - Feedback Statement
H2 2024	Diversity and Inclusion in Financial Services – Policy Statement
July 2024	Proposed Consumer Duty implementation period ends, and rules and guidance come into force for closed products
Late 2024	Credit Information Market Study Final Report – Consultation Papers
Q4 2024	Evaluation of the persistent debt intervention – Publication
End 2024	Post-implementation review of the Guidance for firms on the fair treatment of vulnerable customers – Final Report
2024	Reviewing the Appointed Representatives (ARs) Regime – Treasury Feedback Statement
2024	Complaints Reporting Review
2024	Ban on cold calling for consumer financial services products
2024	Review of the Senior Managers and Certification Regime (SM&CR) – Consultation Paper
2024	Regulation of Buy Now Pay Later (BNPL)
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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