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Insurance Regulatory eBulletin

Round up of regulatory developments in February 2024

IBDO

WELCOME TO OUR INSURANCE REGULATORY EBULLETIN

Welcome to this edition of our Insurance Regulatory eBulletin, which aims to keep you updated with significant regulatory developments from February 2024 and their implications across the insurance sector.

The PRA have issued a policy statement, setting out its feedback to responses in relation to CP12/23 - Review of Solvency II: Adapting to the UK insurance market. There have also been statements of policy setting out its approach to considering applications and granting permissions for the use of internal models and, separately, setting out the approach that it expects to use in relation to capital add-ons. There has also been a statement of policy setting out its approach to certain aspects of insurance group supervision.

This edition also contains details of a number of speeches in relation to conduct regulation, assisting in setting the scene for the regulatory horizon. There has also been the commencement of a consultation process by the FCA in relation to proposed changes to its approach to enforcement. Its proposal is to be more transparent and, in certain circumstances when an enforcement action opens, announcing that an investigation has commenced. It is proposed that the decision to make such an announcement would be taken on a case-by-case basis and this would depend on a variety of factors which will indicate whether to do so is in the public interest.

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

I hope you enjoy reading this latest update.



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PRUDENTIAL REGULATION

THE BANK'S APPROACH TO ENFORCEMENT: STATUTORY STATEMENTS OF POLICY AND PROCEDURE

The PRA has published an updated [statement](#) of policy and procedure following the publication of Policy statement PS 1/24 - The Bank of England's approach to enforcement. This statement of policy provides an overview of the enforcement powers of the Bank and sets out the Bank's statements of policy and procedure in relation to its enforcement powers under existing legislation.

In addition, on 1 February, the PRA [published](#) a document setting out the procedures that will be followed by its Enforcement Decision Making Committee. The Committee was created to assist the Bank in carrying out its responsibilities and to enhance its enforcement processes by ensuring that the Bank's investigation teams and decision makers are separated in contested enforcement cases within the following statutory regimes:

- ▶ Prudential Regulation;
- ▶ Financial Market Infrastructure; and
- ▶ Resolution.

The document outlines how the Committee operates, including its procedures regarding warning notices, representations, expedited and default procedures, decision notices, discontinuation of action by the Bank, and Upper Tribunal proceedings.

PS2/24 - REVIEW OF SOLVENCY II: ADAPTING TO THE UK INSURANCE MARKET

On 28 February, the PRA published a [policy statement](#) PS2/24, setting out its feedback to the responses received on its consultation paper CP12/23 - Review of Solvency II: Adapting to the UK insurance market. Additionally, the near-final rules and updated near-final policy papers, such as supervisory statements and statements of policy (SoPs), are included in the policy statement together with the PRA's final policy.

The implementation date for final rules and policy materials reflecting policy changes outlined in the policy statement is 31 December 2024, as consulted on in CP12/23.

SOLVENCY II INTERNAL MODELS: PERMISSIONS AND ONGOING MONITORING

On 28 February, the PRA [published](#) a SoP setting out its approach to considering applications and granting permissions for the use of internal models for the purpose of calculating the Solvency Capital Requirement.

The SoPs will be effective from 31 December 2024.

SOLVENCY II: CAPITAL ADD-ONS

On 28 February, the PRA [published](#) a SoP setting out the approach that it expects to use in relation to capital add-ons. The SoP is relevant to all UK Solvency II firms, the Society of Lloyd's, its members and managing agents. It is also relevant to all UK holding companies.

This SoP is effective from 31 December 2024.

THE PRA'S APPROACH TO INSURANCE GROUP SUPERVISION

On 28 February, the PRA [published](#) a SoP setting out its approach to certain aspects of insurance group supervision under the Group Supervision Part of the PRA Rulebook. The SoP is relevant to UK Solvency II firms within the scope of the Group Supervision Part of the PRA Rulebook and to the Society of Lloyd's, its members and managing agents, and insurance holding companies and mixed financial holding companies within the scope of the Group Supervision Part.

The SoP is effective from 31 December 2024.

PRA REVIEW OF RING-FENCING RULES

The PRA has published a [report](#) setting out the conclusions of its review of its rules on ring-fencing, which has been conducted throughout 2023. Most of the ring-fencing regime is contained in legislation, but there are also some

requirements set by the PRA in its Rulebook, supported by supervisory statements. Only these PRA rules are in scope of the review.

CP3/24 THE PRUDENTIAL REGULATION AUTHORITY'S APPROACH TO RULE PERMISSIONS AND WAIVERS

On 1 February, PRA issued a [consultation](#) paper setting out its proposal for a new SoP that will set out the PRA's approach to rule permissions made under section 138BA of the Financial Services and Markets Act 2023. The proposed SoP would provide clarity on how the PRA will assess applications, which could lower the cost and increase the speed of permissions.

The deadline for submitting comments is 30 April 2024.

CONDUCT REGULATION

SPEECH - THE UK LISTING REGIME - DEVELOPMENTS SINCE THE UK LISTINGS REVIEW AND NEXT STEPS FOR REFORM

On 6 February, Clare Cole, Director of Market Oversight delivered a [speech](#) at the Westminster Business forum. The highlights of this speech were:

- ▶ Thriving capital markets are the cornerstone of a strong economy and can power sustainable growth. Many factors contribute to a company's decision to list and an investor's decision to invest.
- ▶ Our listing rules are only one part of the picture but the FCA has acted. The FCA has set out detailed proposals for reforms to the UK listing regime to encourage a more diverse range of companies to list and grow.
- ▶ In parallel the FCA is working on proposed revisions to the UK's prospectus and public offering infrastructure to make it easier to raise capital.
- ▶ The FCA are also refreshing the National Storage Mechanism, its online archive of 3.9 million items of regulatory information, to make it more user friendly and help investors make informed decisions.
- ▶ These proposals are the most wide-ranging reforms to the UK's capital markets in over three decades, driving forward changes to attract the brightest and best companies and ensure investors have the information they need.

SPEECH - CONSUMER DUTY: THE ART OF THE POSSIBLE IN A YEAR

On 20 February, Sheldon Mills, Executive Director of Consumers and Competition at the Competition and Markets Authority (CMA), delivered a [speech](#) at KPMG. He highlighted that:

- ▶ Businesses have made significant strides in complying with the Consumer Duty in many

sectors, and time is running out for closed goods and services.

- ▶ The progress made by firms since the Consumer Duty came into force for open products and looked ahead to the deadline for closed products.
- ▶ The CMA is ready to work with the industry on meeting the closed product deadline and urged firms to prioritise areas where there is the greatest risk of consumer harm. It has also published its small firms' survey and good and bad practice guide to help firms on their Consumer Duty journey.

SPEECH - OPEN REGULATORS AND OPEN MARKETS

On 21 February, the Chair of the FCA, Ashley Alder, delivered a [speech](#) at the UK Mission to the European Union. This focussed on open regulators and open markets. He highlighted:

- ▶ The importance of global cooperation among regulators for managing cross-border risks.
- ▶ The FCA's three primary statutory objectives are fully aligned with an open markets philosophy.
- ▶ The commitment to finding consistent international responses to challenges, such as ESG, Fintech, and NBFI, is crucial in addressing cross-border risks.
- ▶ The 2023 UK-EU MOU on regulatory cooperation in financial services will enable the FCA to strengthen relationships with EU counterparts as they pursue similar reforms.

SPEECH - EVOLVING OUR ENFORCEMENT APPROACH TO PROTECT AND GROW OUR MARKETS

On 27 February, Therese Chambers, joint Executive Director of Enforcement and Market Oversight, delivered a [speech](#) at The Market Abuse and Market Manipulation Summit.

- ▶ Our enforcement strategy will evolve to make sure we have the maximum impact in deterring misconduct and crime.
- ▶ Enforcement is just one of our tools - industry cooperation, assertive supervision and intervention powers are also key in dealing with harm.
- ▶ We must speed up investigations to thwart criminals and send a signal to markets and consumers.
- ▶ We need industry and regulators pulling together to stop opportunistic market abuse and its corrosive effects.

FCA RESPONSE TO THE INDEPENDENT PANELS' ANNUAL REPORTS

On 7 February, the FCA published its [response](#) to the six independent statutory panels that represent the interests of consumers, regulated firms, and markets and are required to consult with the FCA on the impact of its work, policies, and practices. These panels are as follows:

- ▶ Financial Services Consumer Panel
- ▶ Practitioner Panel
- ▶ Listing Authority Advisory Panel
- ▶ Markets Practitioners Panel
- ▶ Smaller Business Practitioner Panel
- ▶ Cost Benefit Analysis Panel.

The FCA's responses to the Panels' reports are grouped into two sections:

- ▶ themes raised by all or most of the panels; and
- ▶ some of the specific issues raised by individual panels.

Common themes raised across the panels included:

- ▶ Cost of living;
- ▶ Professional Indemnity Insurance;
- ▶ Smarter Regulatory Framework;
- ▶ Competitiveness and growth;
- ▶ Environmental Social & Governance & Sustainability Disclosure Requirements;

- ▶ Regulatory data and technology; and
- ▶ Consumer Duty.

LETTER: NOTICE TO PROVIDE INFORMATION-NON-FINANCIAL MISCONDUCT

On 6 February, the FCA issued a [notice](#) under Section 165(1) of the Financial Services and Markets Act 2000 to insurance markets requiring them to provide information related to incidents of non-financial misconduct in the firm. This is done as part of a sector-wide information gathering exercise, requiring all regulated Lloyd's Managing Agents and London Market Insurers (including P&I Clubs) and Lloyd's and London Market Insurance Intermediaries (and Managing General Agents) to complete the survey.

KEY FINDINGS OF MULTI-FIRM WORK ON CLAIMS MANAGEMENT COMPANIES CARRYING OUT UNREGULATED CLAIMS

On 15 February, the FCA has published the key findings of multi-firm work on [Claims Management Companies](#) (CMCs) carrying out unregulated claims activity. The FCA recently looked at this area to assess if firms were using their FCA authorisation to legitimise services that are not regulated. The FCA is concerned that consumers may mistakenly assume that all the services CMCs offer come within FCA's regulation, which can mislead them about the level of protection they have and give unregulated activities extra credibility. This report includes FCA's: actions, findings, and expectations from firms.

GAP INSURERS AGREE TO SUSPEND SALES FOLLOWING FCA CONCERNS OVER FAIR VALUE

On 12 February, the FCA [announced](#) that several insurance firms have agreed to pause sales of Guaranteed Asset Protection (GAP) insurance, following a request made by the FCA.

CONSUMER DUTY FIRM SURVEY - AUTUMN 2023

On 20 February, the FCA [published](#) the findings of the Consumer Duty firm survey -- Autumn 2023. This was the second of three waves of

quantitative tracking research on monitoring firms' progress and challenges to implementing the Consumer Duty. This wave, which was six months following wave 1, focuses on compliance and actions made in response to the Duty. The FCA wanted to know how companies have complied with the Consumer Duty in a snapshot taken around two months after the compliance deadline of 31 July 2023.

The results of firms surveyed indicate improvements since Spring 2023:

- ▶ The percentage of surveyed firms indicating they have completed the required steps has significantly increased for some portfolios, 43% of surveyed firms reported that they are not having difficulty with implementing any aspects of the Duty;
- ▶ Retail Finance Providers and Debt Advice Firms, sectors that previously exhibited lower levels of preparedness during the Spring, have reported improvements, narrowing the gap between them and other sectors;
- ▶ The percentage of surveyed firms engaged in relevant activities has increased for several key elements of the Duty. Firms are predominantly reporting that they have identified their target market for products and services (74%) and nominated a staff member, team, or committee to oversee implementation (73%);
- ▶ 74% of surveyed firms also report that they have conducted a fair value assessment;
- ▶ Outcomes monitoring is reported as most difficult to implement, with Payment Services Firms (41%) and Wealth Management firms (36%) most likely to report this; and
- ▶ 38% of surveyed firms have improved significant consumer contracts and 30% of firms have made significant improvements to their marketing strategies.

Reported improvements in complying with the Duty represent a positive trend that must continue towards and beyond the upcoming full implementation deadline on 31 July 2024. Firms

must ensure they are not only carrying out the necessary activities to integrate the Duty but also capable of providing evidence of these actions, ultimately delivering good consumer outcomes.

THE FCA AND PRACTITIONER PANEL JOINT SURVEY FOR 2024 LAUNCHES

On 2 February, the FCA and Practitioner Panel launched a [joint survey](#) to gather feedback on how they are doing in regulating the industry. The survey is one of several sources of feedback used to evaluate the FCA's performance against key areas of its 3-year Strategy. The results of the survey will be presented to the Board and published in summer 2024. The FCA will use the survey results to better understand issues affecting firms and to assess any changes it should consider making to its approach.

FCA CONSULTS TO IMPROVE PACE AND TRANSPARENCY AROUND ENFORCEMENT CASES

On 27 February, the FCA [announced](#) a commitment to carrying out enforcement cases more quickly as the organisation seeks to increase the deterrent impact of its enforcement actions. In the future the FCA will focus on a streamlined portfolio of cases, aligned to its strategic priorities where it can deliver the greatest impact. The FCA also intends to close those cases where no outcome is achievable, more quickly.

The FCA has begun a [consultation](#) on plans to be more transparent when an enforcement investigation is opened. The decision to announce an investigation would be taken on a case-by-case basis and depend on a variety of factors which will indicate whether to do so is in the public interest.

The deadline for a response to the consultation is 16 April 2024.

REGULATION ROUND UP

On 29 February, the FCA published its monthly Regulation Round-up. In addition to various topics, noted either last month or above, this noted, the following:

▶ Reducing and preventing financial crime

The FCA has published ‘Reducing and preventing financial crime’, an update on the progress the FCA has made alongside firms and partners over the past 18 months.

Four areas of focus have been identified where further collaboration can make a difference:

- **Data and Technology:** firms and partners should be bolder and more collaborative in how they engage with new technologies to keep up with emerging risks.
- **Collaboration:** sharing data and intelligence is vital. The FCA strongly encourages firms and cross-sector partners to participate in data-sharing initiatives and explore the latest advances in data-sharing technology.
- **Awareness:** raising consumer awareness is essential to combatting financial crime. The FCA asks firms to consider if they are doing all they can to alert their customers to relevant fraud risks.
- **Metrics:** we need to know that what we are doing is working. The FCA encourages firms to consider how their interventions contribute towards a reduction in financial crime.

The FCA has also called on social media platforms to do more to tackle harmful organic content which illegally promotes scams. Their objective is to support a system-wide approach to tackling financial crime, including public and private partners.

▶ Authorisation applications update

The FCA is continuing the roll out of the improved Form A, which is used for Senior Management Function and Controlled Function applications.

▶ Approving financial promotions for unauthorised persons

There was a reminder that the initial application window to apply for permission to approve financial promotions for unauthorised persons has now closed.

Firms are still able to apply for this permission, but they will not be able to approve promotions within the scope of the requirement for permission unless and until their application is granted.

The FCA’s Register has been updated to provide information about the ability of firms to approve financial promotions for unauthorised persons.

▶ TechSprints

The FCA has announced that from 25 March to 20 June 2024, it will host a three-month cohort-based [TechSprint](#) with the theme of Market Abuse Surveillance. With the exception of Demo Day, which takes place in person on 20 June 2024, at the FCA Headquarters in London, the event is entirely virtual. Applications must be submitted by 18 March 2024.

▶ REP025 submissions - checks for principals

The FCA noted common mistakes from principal firms when completing their REP025. When submitting your REP025 the FCA have asked for the following:

- check for typos and inaccuracies before submit;
- include complaints data only for Appointed Representatives with complaints in the relevant reporting period.

EIOPA

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

Items of possible interest this month are as follows:

JC 2024 02 JOINT-ESA REPORT ON 2023 STOCKTAKING OF BIGTECH DIRECT FINANCIAL SERVICES PROVISION IN THE EU

On 1 February, the European Banking Authority, EIOPA, and European Securities and Markets Authority issued their [findings](#) from a cross-sectoral stocktake of BigTech subsidiaries providing financial services in the European Union. The report found, that no BigTech subsidiaries were listed as providing financial services in the securities and markets sector. In contrast to past years' outcomes, BigTechs' direct financial service provision remains limited to date. The National Competent Authorities (NCAs) also urged further action to remedy the shortcomings in notification practices pertaining to cross-border financial services. In terms of next steps, the European Supervisory Authorities will continue the cross-disciplinary exchanges to further promote information sharing between NCAs and other pertinent authorities involved in the surveillance of BigTechs' activities.

FREEDOM TO PROVIDE SERVICES (ART. 4 AND 5 IDD)

On 5 February, EIOPA [published](#) its regulation question and answer, specifically on the topic of freedom to provide services. The question revolves around whether an insurance intermediary is authorised to act under the freedom of services (FOS) for certain insurance classes in another EU member state if the insurance undertaking, on whose behalf the intermediary is acting in its home member state, is not allowed to conduct FOS for those insurance classes in the host member state. EIOPA answered that any intermediary for insurance,

reinsurance, or ancillary insurance that plans to conduct business for the first time within the borders of another Member State under the freedom to provide services must provide specific information to the appropriate body in its home Member State, including the name of any undertakings for insurance or reinsurance that it represents and the applicable classes of insurance, if any (in accordance with points (c) and (d) of Article 4(1) of the IDD).

This document is dated 19 October 2023, but was published in EIOPA's website on 1 February 2024.

MONTHLY UPDATE OF THE SYMMETRIC ADJUSTMENT OF THE EQUITY CAPITAL CHARGE FOR SOLVENCY II - JANUARY 2024

On 5 February, EIOPA [released](#) technical details on the symmetric adjustment of the equity capital charge for Solvency II with reference to the end of January 2024.

EIOPA PUBLISHES MONTHLY TECHNICAL INFORMATION FOR SOLVENCY II RELEVANT RISK-FREE INTEREST RATE TERM STRUCTURES - END-JANUARY 2024

On 5 February, EIOPA [published](#) technical information on the relevant risk-free interest rate term structures (RFR) with reference to the end of January 2024. The RFR information has been calculated on the basis of the RFR Technical Documentation.

EIOPA INSURANCE RISK DASHBOARD SEES MARKET RISKS AS KEY CONCERN FOR INSURERS IN EARLY 2024

On 5 February, EIOPA issued a [press release](#) announcing that its February 2024 Insurance Risk [Dashboard](#), indicated that the primary concern for the insurance industry at this time is insurers' high level of market risk exposure. The EIOPA has also observed that, while macro and digitalisation risks have diminished to a medium degree, the risks related to other risk categories

are still at a medium degree. Notably, market risks remain significant due to the high levels of volatility in bond markets and the ongoing decline in the price of commercial real estate.

EIOPA-BOS-24-025 INSTITUTIONS FOR OCCUPATIONAL RETIREMENT PROVISION (IORPS) RISK DASHBOARD

On 1 February, EIOPA published its Institutions for occupational retirement provision (IORPs) [Risk Dashboard](#). The risk dashboard, based on individual occupational pensions regulatory reporting, summarises the main risks and vulnerabilities in the EEA IORPs sector for the different schemes, i.e. defined contributions and defined benefits, through a set of risk indicators.

It includes a set of risk indicators covering traditional risk categories such as market and credit risks, liquidity risks, reserve and funding risks, as well as emerging threats like ESG and cyber risks.

CORPORATE GOVERNANCE

REVIEW OF REPORTING BY THE UK'S LARGEST PRIVATE COMPANIES

The FRC has published its [evaluation](#) of reporting by the UK's largest private companies. It found that the reporting quality was mixed overall, especially when it came to how difficult or subjective material issues were explained by the companies. The FRC set out the important findings that businesses and their auditors should consider for upcoming annual reports:

- ▶ the best strategic report disclosures focus on the topics that are essential to understanding the company;
- ▶ better examples of judgement and estimate disclosures included specifics about the judgement in question and clearly explained the reasoning behind the conclusion; and
- ▶ accounting policies for intricate transactions and balances were often untailored, providing boilerplate wording.

STATEMENT: FRC POLICY UPDATE - LAUNCH OF THE UK STEWARDSHIP CODE 2020 REVIEW

On 27 February, the FRC [announced](#) that it is undertaking a fundamental review of the UK Stewardship Code 2020 (the Code) to ensure it supports growth and the UK's competitiveness. As part of the review process, the FRC is seeking views from all stakeholders on whether the Code, in its current format, is being used by asset managers, asset owners, and other signatories to the Code in a manner that drives better stewardship outcomes from engagement with issuers across all asset classes.

FRC PUBLISHES REVISED VERSION OF ACTUARIAL STANDARD TECHNICAL MEMORANDUM 1

On 9 February, the FRC [published](#) a revised version of Actuarial Standard Technical

Memorandum 1 (AS TM1). The revised standard, effective from 6 April 2024, has higher accumulation rate assumptions in response to higher long term interest rates and gilt yields resulting in higher long term expected returns.

TECHNICAL ACTUARIAL STANDARD FOR INSURANCE CONSULTATION

On 16 February, the FRC issued a [consultation paper](#) on proposed changes to Technical Actuarial Standard 200: Insurance (TAS 200), which became effective for technical actuarial work completed after 1 July 2017. There are several key proposed changes to TAS 200:

- ▶ a new rule is being introduced to assist practitioners in analysing the impact of the FCA's Consumer Duty principle on technical actuarial work as well as an extension of the scope to include technical actuarial work supporting the tasks of the Actuarial Function and insurance transactions;
- ▶ provisions are being eliminated if they are sufficiently addressed in TAS 100 v2.0. This includes all 11 provisions in the 'Core Provisions' section and 2 existing provisions (along with 2 sub-provisions) in the 'Provisions for specified work' section, out of a total of 23 provisions in the current standard; and
- ▶ changes are being made to provisions to address known gaps in the quality of technical actuarial work relating to insurance transformations, audit processes, and assumption setting.

Comments should be submitted on or before 10 May 2024.

INFORMATION COMMISSIONER'S OFFICE

38 leisure facilities for the purpose of monitoring attendance.

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

INFORMATION COMMISSIONER'S OFFICE TELLS PLATFORMS TO RESPECT INFORMATION RIGHTS WHEN MODERATING ONLINE CONTENT

On 16 February, the ICO [announced](#) it is working to support people's information rights online by ensuring organisations understand their data protection obligations when seeking to improve the safety of their platforms. Organisations commonly utilise content moderation to analyse content generated by users to check if it is appropriate for publication on their platforms. In the regulator's first guidance on content moderation, the ICO has outlined how data protection laws apply to processes involving the use of personal information and the potential harm from incorrect decisions and their impact on people's information rights.

ICO APPROVES LEGAL SERVICES CERTIFICATION SCHEME

On 13 February, the ICO [announced](#) its approval of a certification scheme under the UK GDPR for legal service providers handling personal data.

ENFORCEMENT NOTICES: SERCO LEISURE OPERATING LIMITED AND RELEVANT ASSOCIATED TRUSTS

Serco Leisure, Serco Jersey and seven associated community leisure trusts have been issued [enforcement notices](#) ordering them to stop using facial recognition technology and fingerprint scanning to monitor employee attendance. The ICO's investigation found that Serco and the trusts have been unlawfully processing the biometric data of more than 2,000 employees at

ENFORCEMENT ACTION

PRA / FCA REGULATORY FINES ROUND-UP

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

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