

THE COMPLIANCE JOURNAL

Regulatory Round Up - April 2020



Welcome to the Compliance Journal, bringing you a summary of regulatory updates from across the month. The regulatory environment is ever changing, so we'll aim to provide updates on key publications, useful articles and information. As your helpful insurance partner, we always aim to add value, so do hope you find the content useful.

Helen Holyoake, Risk Compliance and Agency Manager



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FCA SPEECH: Our approach to ensuring firms treat vulnerable customers fairly

On 5th March 2020 the FCA published a speech by Nisha Arora, Director, Consumer and Retail Policy at the FCA, which had been delivered at the TISA Vulnerability Conference. The speech outlined the FCA's forthcoming guidance which seeks to give firms greater clarity and explain what, under the Principles for Businesses, firms need to do to ensure that vulnerable consumers are treated fairly and consistently across financial services sectors. The FCA want to see the Guidance embedded in firms' culture, processes and practices and expect firms to demonstrate how they are complying with the Principles in respect of the treatment of vulnerable consumers. One of the aims of the Guidance is to change the discourse from whether the right boxes have been ticked to achieve compliance, to firms stepping back to ask what their vulnerable customer's needs are, and how they are then responding to deliver good outcomes. Firms need to embed this thinking in their culture, practices and processes throughout the whole customer journey, from product design to customer service. The speech also focussed on why the protection of vulnerable consumers is so important. In its Financial Lives survey 2017 the FCA found that 50% of

UK adults display one or more indicators of being vulnerable: physical and mental health; life events; financial capability and financial resilience. That means half of all UK consumers may be at increased risk of harm – from making poor decisions or being at greater risk of mis-selling or being excluded from products or services. In July 2019, the FCA consulted on draft Guidance for firms on the fair treatment of vulnerable customers. The aim in issuing guidance, rather than prescriptive rules, is to encourage firms to consider the guidance through the lens of their own business and decide which actions they need to take to meet the needs of their vulnerable customers. The FCA understand that this cannot be a 'one size fits all' approach. The draft guidance focussed on 4 key areas:

- Understanding vulnerability, not just that of individual customers but common vulnerabilities within a sector, enabling a firm to adapt in order to address the needs of a target market
- Skills and capabilities of staff, not just those on the frontline

but all staff – for example, management should be embedding the right culture across the firm, product designers should recognise the vulnerabilities of the target market and those writing company policies should ensure the vulnerabilities of customers are considered

- Product and Service Design. Firms should be considering the needs of vulnerable customers in their target market at each stage of the design process and identifying the positive and negative impacts of a product or service on vulnerable customers
- Customer Service. Firms should consider the impact of their service on vulnerable customers, for example, having flexibility in processes to meet the needs of vulnerable customers

The FCA's first consultation closed in October, the feedback for which is being used to refine the final Guidance. Revised Guidance is due to be consulted on in Spring this year with a view to finalising it later in the year.



FCA sets out expectations for general insurance firms during coronavirus (COVID-19) pandemic

The FCA has set up a dedicated web page, clearly setting out its expectation of firms during the pandemic and reminding firms that they will take any necessary steps to ensure customers are protected and markets continue to function well. The FCA confirms that their rules give firms the ability to consider their arrangements and customers' circumstances and welcome firms who are reviewing their current arrangements to address the evolving situation while managing the risks to their employees, customers and the impact on the market.

The FCA expects firms to be taking reasonable steps to ensure they are prepared to meet the challenges coronavirus could pose to customers and staff, particularly through their business continuity plans, and expect firms to provide strong support and service to customers during this period. Generally, the FCA expect firms to:

- Have sufficiently robust systems and controls to continue

to operate effectively in a stressed situation with business continuity plans to manage this.

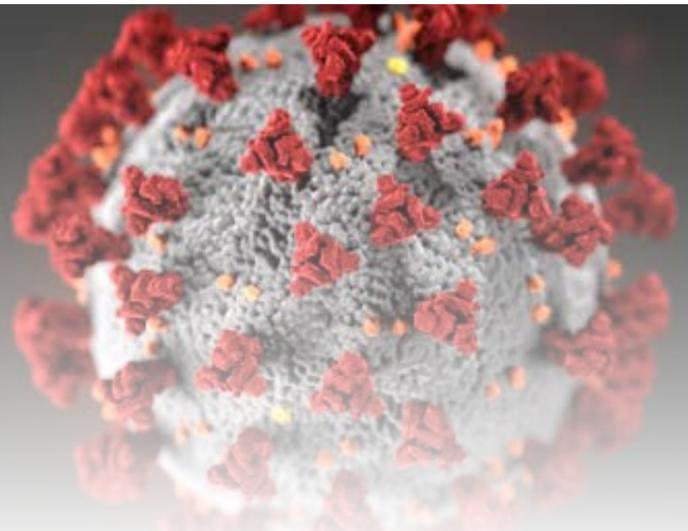
- Have a Senior Manager(s) responsible for business continuity and for managing the impact of coronavirus.
- Act fairly, honestly and professionally in accordance with the best interests of customers.
- Ensure that all customer communications are clear, fair and not misleading. Firms must clearly communicate any policy exclusions that may impact cover and use of individual policies, both for new sales or change to existing policies (either mid-term or at renewal).

In addition, the FCA expects firms to manage their financial resilience, actively manage their liquidity and report to the FCA immediately if they believe they will be in difficulty.

Due to the coronavirus (COVID-19) pandemic, many customers will find themselves in a vulnerable position and the FCA makes clear its expectation of firms to carefully consider the needs of their customers and show flexibility in their treatment of them. The FCA highlight the fact that customers behaviours are likely to change due to the pandemic and make it clear that they would not expect to see a customer's ability to claim impacted by circumstances over which they have little control.

The FCA are closely monitoring the coronavirus situation and will continue to update their dedicated web page over the coming weeks and expect to adapt their guidance to firms as the coronavirus situation develops.

For more information see [here](#)





FCA: Sector Views

In February 2020 the Financial Conduct Authority (FCA) published its annual Sector Views, providing a summary of how it considers each financial sector is performing. This includes the FCA's annual analysis of the way the financial environment is changing and the impact of these changes on consumers and market effectiveness. This analysis will contribute to the FCA's Business Plan 2020/21 and the decisions they make affecting consumers, market integrity and competition. Below is a summary of the latest Sector Views for General Insurance and Protection:

Key areas of harm in General Insurance:

- Pricing practises in personal lines still penalise loyal customers
- Complex distribution chains and products are contributing to poor value
- Customers with specific needs are facing barriers to insurance products
- Add-on prices continue to cause harm to consumers

- Higher prices from inefficiencies in the London Market
- Misuse of customer data can harm consumers, particularly vulnerable customers
- Non-financial misconduct in the London Market poses a threat to Market Integrity

How the retail general insurance Sector is changing:

- Home and Motor insurance remain the largest markets while take up of protection insurance lags behind
- Home and Motor insurance customers often pay a loyalty penalty
- Ghost broking on the rise
- Premiums decrease despite claims costs increasing
- Changes in society are changing the insurance environment

- Consumers are increasingly using price comparison websites (PCWs)

- UK is a good place for insurtech investment
- SME lines grow with inflation

And from a consumer perspective.....

- Trust in Insurers is low
- Price dominates decision making in home and motor
- Insurance policies remain unclear and consumers have mixed knowledge and understanding of policies
- SME loyalty higher than for personal lines insurance
- Importance of digital as a key channel to access insurance is growing.

The FCA's Business Plan is usually issued in April, so we can expect to see more on these topics then.

Data Protection

Data protection and coronavirus: what you need to know

Recognising the challenges being faced by firms during the Coronavirus (COVID-19) pandemic, the Information Commissioner's Office (ICO) produced a list of the most common questions its helpline has received in relation to data processing during the pandemic. The ICO understands that firms may need to adapt the way they work, and state that Data Protection will not stop that, however do remind us that it's about being proportionate - if something feels excessive from the public's point of view, then it probably is.

Some firms have stated that during the pandemic, they are worried that their data protection practices might not meet their usual standard or their response to information rights requests would be longer and asked if the ICO would take regulatory action against them. The ICO response advises that they understand resources, whether they are finances or people, might be diverted away from usual compliance or information governance work and stated it won't penalise organisations that they know need to prioritise other areas or adapt their usual approach during this extraordinary period. And whilst the ICO can't extend statutory timescales, they will tell people through their own communications channels that they may experience understandable delays when making information rights requests during the pandemic.

Another common question is around staff working from home and what kind of security measures an organisation should have in place for homeworking during this period. The ICO have stated that they do not see Data Protection as a barrier to increased and different types of home working however reminds firms that they will need to consider the same kinds of security measures for home working that they'd use in normal circumstances.

From an employee perspective, the ICO have been asked whether firms can tell other staff that a colleague may have potentially contracted COVID-19. The ICO advised that staff should be kept informed about cases in their organisation - firms have an obligation to ensure the health and safety of its employees, as well as a duty of care. However, firms shouldn't provide more information than necessary, and it shouldn't be necessary to name individuals. For further information visit <https://ico.org.uk/for-organisations/data-protection-and-coronavirus/>

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The National Cyber Security Centre has also released guidance to help organisations reduce the risk of cyber-attack on home working devices. More information can be found at <https://www.ncsc.gov.uk/guidance/home-working>



Complaints

Financial Ombudsman Service COVID-19 (coronavirus) - information for consumers

The Financial Ombudsman Service (FOS) provided an update on its service and support during COVID-19, stating their continued commitment to provide a service to the people who need the FOS the most, whilst ensuring the well-being of their people. The FOS have issued guidance for consumers on specific types of complaint and a reminder to firms that the FOS expect any insurer to remember its duties to deal with claims fairly and promptly, and not to reject a claim unreasonably. Recognising that this is a very unique situation, the FOS is urging firms to think beyond a strict interpretation of the policy terms and consider carefully what's fair and reasonable in each case, taking into account the unprecedented situation created by COVID-19.

Competitions and Markets Authority Annual Plan 2020/21

The CMA have issued their Annual Plan setting out the plans and priorities for 2020/21. Noting that 2020 will be a year of change for the UK as we leave the EU, the CMA also note that competition in the UK appears to be getting weaker in several sectors of the economy and there is a continued need to drive out practices that harm customers and damage trust in markets. The CMA also refers to the significant growth of new and rapidly emerging forms of consumer detriment, caused in part by the increasing digitalisation of the economy, noting the need for more rapid and new types of intervention.

The plan notes the intention of the CMA to shift its culture and sharpen the focus on what matters to consumers. In a recent speech Andrea Coscelli, Chief Executive of the CMA stated 3 initiatives that the CMA believes will bring them closer to consumers:

- 1. Know more; understand better:** Deepening their understanding of how existing markets are changing, new markets are emerging, and of consumers' experiences and concerns.
- 2. Explain the choices they make:** Improving how they choose which problems to take on and do more to explain these decisions.
- 3. More visible and vocal:** Effecting change through speaking up publicly as well as through enforcement.

The CMA have also started a project to assess the state of competition in markets across the UK, and consumers' experiences of those markets, and is aiming produce an initial report on this in the summer. The review will also look at the experience of small to mid-size businesses.

In terms of priorities for 2020/21 the CMA's Annual Plan sets out the following strategic objectives:

- **Protecting consumers, including in particular those in vulnerable circumstances:** The CMA will play a prominent role in promoting the interests of consumers, particularly the most vulnerable, by championing good outcomes for consumers and by addressing new and emerging forms of detriment. This includes enforcement action where consumers are being ripped off, as well as behavioural insights work to gain a better understanding of consumer vulnerability.
- **Improving trust in markets:** In response to concerns that many markets are not working as well as they should for ordinary consumers, or for small businesses, the CMA intends to use the full range of its powers to seek to right these wrongs, seeing through existing cases and launching new ones. The CMA confirmed its continued commitment to making sure that the issues identified in the Citizens Advice super-complaint on loyalty penalty charges are effectively tackled both in the five markets identified, and across the whole economy. The CMA will publish a further update in summer 2020.
- **Tackling concerns in digital markets:** Ensuring that the many benefits of digitalisation for consumers are secured, while making sure that concerns are properly addressed. The CMA intends to deliver on its Digital Markets Strategy, published in July 2019, and finish its market study into online platforms and digital advertising, tackling abuses where necessary.
- **Enhancing productivity and economic growth:** Effective competition is of direct benefit to consumers but brings wider economic benefits too such as enhanced business efficiency and innovation, which in turn improves productivity and

facilitates growth, job creation and better living standards in the economy as a whole. The CMA will step up its work to advise government in designing and implementing policy in a way that harnesses competition and protects the interests of consumers.

- **Climate change - supporting the transition to a low carbon economy:** Developing an understanding of how climate change affects markets and how the CMA can support the transition to a low carbon economy. Where necessary the CMA will also consider using its enforcement powers to correct false or misleading statements that affect consumers, for example in the use of 'green' claims.
- **Taking on new responsibilities as a result of the UK leaving the EU:** Ensuring the CMA has the necessary people, skills and infrastructure in place to take on its expanded role outside of the EU from January 2021.

In addition to focusing its efforts in these key areas, the CMA will also strive to keep pace with fast-moving global events that are likely to impact markets and consumers in the UK and globally, not least the rapidly escalating concerns around the spread of Coronavirus (COVID-19).

For further information visit <https://www.gov.uk/government/publications/competition-and-markets-authority-annual-plan-2019-to-2020>

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Test Your Knowledge Remember SM&CR

So, you may recall that the Senior Managers & Certification Regime (SM&CR) was extended to all solo regulated firms such as Insurance Brokers and Intermediaries with effect from 9th December 2019. The regime aims to reduce harm to consumers and strengthen market integrity by making individuals more accountable for their conduct and competence by:

- Encouraging staff to take personal responsibility for their actions
- Improving conduct at all levels

- Making sure firms and staff clearly understand, and can show, who does what

Here's a little quiz to test your memory....

QUIZ

1. What are the 5 Tier 1 Conduct Rules?
2. What are the 3 different types of firm under SM&CR?
3. What are the 2 key regimes under SM&CR?

Answers:

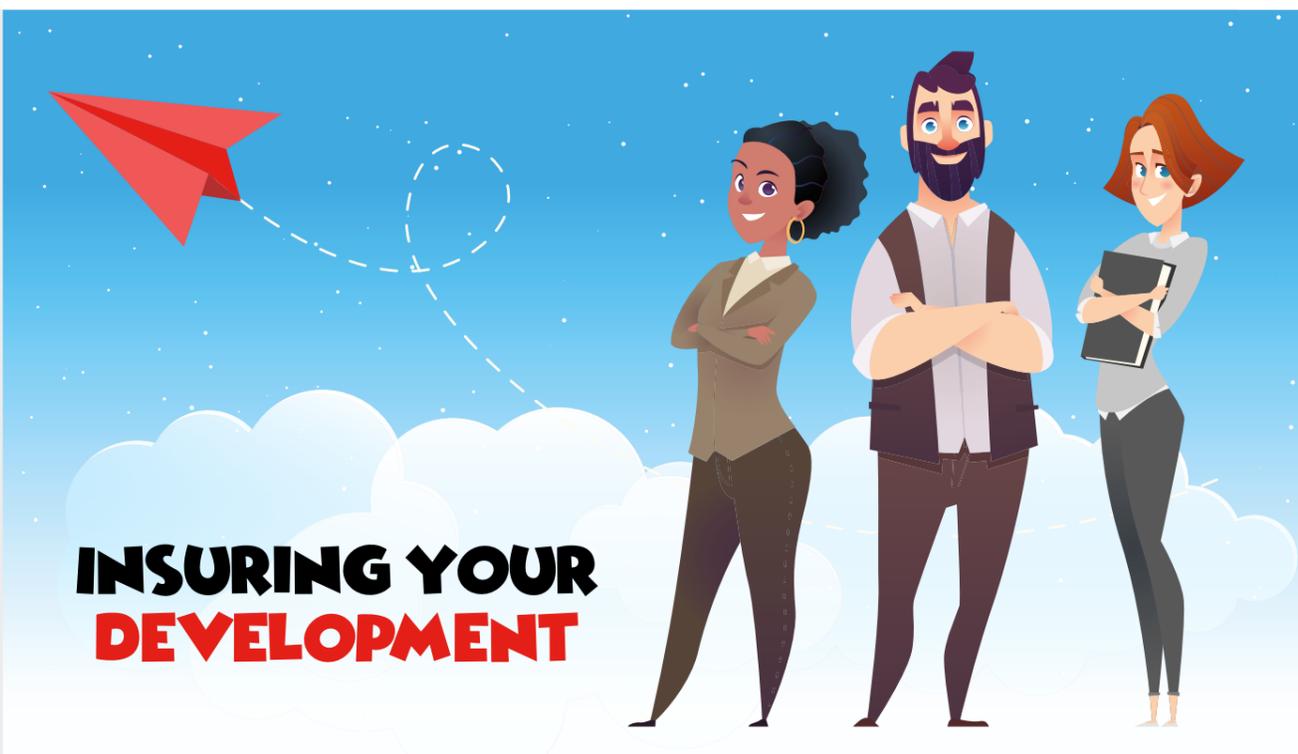
1. You must: act with integrity, act with due care, skill and diligence, be open & cooperative with the FCA, the PRA and other regulators, pay due regard to the interests of customers and treat them fairly and observe proper standards of market conduct
2. Limited Scope, Core and Enhanced
3. Senior Managers Regime and Certification Regime



CE LEARNING Online

Hopefully, most of you will have taken advantage of our SMC-ARRGH! Module available on CE Learning Online, if not you can find out more by visiting:

ce-learning.co.uk



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