

THE COMPLIANCE JOURNAL

Regulatory Round Up - July 2021



As we approach the middle of the year we are pleased to provide you with our July edition of the Commercial Express Compliance Journal. Enclosed you will find a summary update on some of the recent regulatory developments, noting a couple of key papers issued by the FCA. We also summarise some of the key points from the FOS publication of annual complaints data. We hope you will find the content useful.

Helen Holyoake, Risk Compliance and Agency Manager

Financial Conduct Authority

FCA proposes stronger protection for consumers in financial markets

During May, the FCA launched its consultation paper (CP21/13) in which it sets out its plans for a new Consumer Duty. The FCA is concerned with, and has seen evidence of, practices that can cause consumer harm, one example being firms providing information that is misleadingly presented or difficult for consumers to understand. Therefore, the FCA is looking to expand its existing rules and principles, and set a higher level of consumer protection for firms to adhere to. The intention of the new Duty is to drive a shift in the culture and behaviour for firms, to ensure consumers always get products and services that are fit for purpose, that represent fair value and are clearly communicated and understandable.

The proposals relate to products and services sold to 'Retail Clients', which refers to all clients except professional clients (such as large corporate entities and government bodies) and eligible counterparties, therefore SMEs are also covered by the proposals as well as consumers. They also relate to all firms in the distribution chain, regardless of whether they have a direct relationship with the end client.

The Consumer Duty will have 3 key elements:

- The Consumer Principle, which will reflect the overall standards of behaviour the FCA expects from firms. The wording being consulted on is: 'a firm must act in the best interests of retail clients' or 'a firm must act to deliver good outcomes for retail clients'.
- Cross-cutting rules which would require 3 key behaviours from firms, which include taking all reasonable steps to avoid foreseeable harm to customers, taking all reasonable steps to

enable customers to pursue their financial objectives and to act in good faith.

- 4 specific outcomes relating to communications, products and services, customer service and price and value.

Firms will be required to comply with the Consumer Duty or face regulatory action and enforcement investigation if they fail to do so.

The consultation is open for comment until 31 July 2021. The FCA expects to consult again on the proposed rule changes by the end of 2021 and make any new rules by the end of July 2022. The full press release and Consultation Paper can be viewed here:

<https://www.fca.org.uk/news/press-releases/fca-proposes-stronger-protection-consumers-financial-markets>



Financial Conduct Authority

General insurance pricing practices market study Feedback to CP20/19 and final rules

In May, the FCA released its Policy Statement setting out the final rules following its consultation on general insurance pricing practices. The consultation paper issued in September 2020 proposed a number of remedies to address harm identified in the home and motor markets following the FCA's general insurance pricing practices market study. The FCA had identified that while a number of customers shop around, those that remained loyal were not getting good value. Following the consultation, the Policy Statement now sets out the new rules introduced by the FCA to address the harm identified. The policy statements affected general insurers and intermediaries, life insurers and intermediaries selling pure protection business, trade bodies representing these firms and consumers and consumer organisations.

The rules set out a package of measures to ensure firms are offering fair value products:

- A pricing remedy, which requires renewal prices offered to customers to be no greater than the equivalent new business price for a new customer.

- Enhancements to the FCA's product governance rules for all non-investment insurance contracts, (including all types of general insurance and pure protection insurance, not just home and motor insurance). Firms must ensure they have processes in place to deliver products that offer fair value to customers.
- Rules requiring firms to offer a range of accessible and easy options for consumers who want to cancel auto-renewal of their contracts.
- Reporting requirements to help the FCA's ongoing supervision and monitoring of the home and motor insurance markets.

The new rules relating to systems and controls (SYSC), retail premium finance and product governance are effective from 1st October 2021. The rules on pricing, auto-renewal and reporting are effective 1st January 2022 with a transitional period for the rules on pricing and auto-renewal disclosure allowing firms until 17th January 2022 to have processes in place, providing the benefits for customers are backdated to 1st January.

The full policy statement can be viewed here:

<https://www.fca.org.uk/news/press-releases/fca-confirms-measures-protect-customers-loyalty-penalty-home-motor-insurance-markets>

Data Protection

ICO Blog: Did you know the ICO offer a free advisory check up?

On the 30th April the ICO issued a Blog on free advisory check ups, which are designed to help small businesses make the best use of their data. In order to make best use of data it is key for firms to understand their data protection responsibilities. The ICO are offering free Advisory check ups for owners of small organisations which are tailored to the organisation's size and the type of work, with a particular focus on areas that are important for the firm customers, volunteers, members and the people working alongside the firm. Owners of small organisations – including small businesses, small charities, groups or clubs and sole traders – can apply to the ICO for an informal session of up to two hours where a member of the ICO's SME team will work with the firm to complete a health check of its practices. A brief report is then provided to set out what your firm will need to do to handle data more effectively as your business grows.

For more information see: <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2021/04/free-advisory-check-ups-help-small-businesses-make-the-best-use-of-their-data/>



Financial Ombudsman Service Section

Financial Ombudsman Service publishes annual complaints data 2020/21

The FOS has issued its annual complaint data reflecting the period from 1 April 2020 to 31 March 2021. For complaints reported under the Insurance Category, the FOS has reported a 36% increase on the prior year, with the most complained about product being car insurance and the most common reason for complaint being claims declined. The FOS gives the view that many complaints could be avoided by firms providing clearer guidance about the information that customers need to disclose during the sales process – particularly for sales taking place via price comparison websites. In addition, Insurers could make it clearer what the consequences are for customers if they misrepresent the risk or fail to notify their insurer of any changes.

The FOS also commented that many complaints might have been avoided if there had been better communication between the firm and the customer, therefore managing the customers' expectations, and many complaints that they upheld were because the business hasn't addressed what had gone wrong or suggested a way forward that's right for that particular customer.

When referring to complaints linked to the pandemic, earlier data showed that travel and business interruption insurance collectively accounted for 43% of complaints received. Since

then, the FOS has seen an increase of 240% in complaints about travel and special events insurance, where consumers had been affected by cancellations and restrictions. Whilst the FOS will consider whether customers can recover losses from elsewhere before calling on their travel insurance policy to pay out, i.e. from a tour operator or airline, the FOS still expect insurers to take a pragmatic view and if an insurer hasn't been disadvantaged, the FOS advise they are unlikely to think it's fair to decline a claim that would otherwise have been covered. Wedding insurance had the highest uphold rate across all products in 2020/21 (94%) and saw a large year-on-year increase, with complaints from many customers on how claims had been handled. Whilst the FOS understand insurers need to consider whether any policy exclusions apply to a claim, it is still expected that insurers take into account unprecedented situations, such as the pandemic, when deciding whether to rely on an exclusion.

In respect of complaints from small businesses regarding business interruption claims, the FOS noted that many insurers were revisiting rejected claims. In respect of any complaints received by the FOS, they will consider how the judgment ruling from the Supreme Court applies to the individual circumstances of any complaint received.

The full publication can be viewed at the following link: <https://www.financial-ombudsman.org.uk/news-events/financial-ombudsman-service-publishes-annual-complaints-data-202021>



Just for Fun

The FCA recently issued their Final Guidance on the treatment of Vulnerable Customers and set out the expectations of all firms.

The FCA want to ensure customer vulnerability is taken seriously by firms, and properly embedded within their culture, policies and processes – this means at all stages of the customer journey and not just at the front line, for example, ensuring product design also takes this into account. It is expected that firms Senior Leaders create and maintain a culture that enables and supports staff to take responsibility for reducing the potential for harm to vulnerable customers.

The Finalised Guidance set out some key areas for firms to achieve good outcomes for Vulnerable Customers. Can you remember what they are? Fill in the blanks to test your knowledge!

Firms should:

- 1) understand the _____ of their _____ / customer base
- 2) ensure their staff have the right _____ and _____ to recognise and respond to the needs of vulnerable customers
- 3) respond to customer needs throughout product _____, flexible _____ provision and _____
- 4) _____ and _____ whether they are meeting and responding to the needs of customers with characteristics of vulnerability, and make _____ where this is not happening

- Answers:**
- 1) understand the **needs** of their **target market** / customer base
 - 2) ensure their staff have the right **skills and capability** to recognise and respond to the needs of vulnerable customers
 - 3) respond to customer needs throughout product **design**, flexible **customer service** provision and **communications**
 - 4) **monitor** and **assess** whether they are meeting and responding to the needs of customers with characteristics of vulnerability, and make **improvements** where this is not happening

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