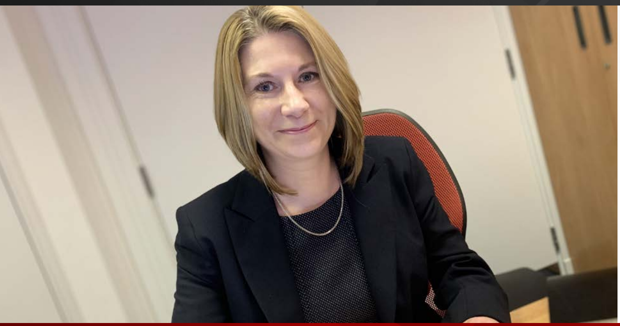
THE COMPLIANCE JOURNAL

Regulatory Round Up - July 2022



Welcome to the July edition of the Commercial Express Compliance Journal, covering some of the key regulatory updates of the last few months. We have seen some updates from the FCA and the FOS, and updates from the FSCS. Hope you find the content useful.

Helen Holyoake, Risk Compliance and Agency Manager

Click on any of the below to read...

FCA: Supervisory Strategy for Personal and Commercial Lines Insurance Intermediaries (P&CLII)

FOS: Ombudsman News 169: Storm and flood damage complaints – information for financial businesses

FOS: Financial Ombudsman Service publishes its plans and budget for 2022/23

FSCS: Shares its latest compensation and overall levy forecast for 2022/23

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FCA Supervisory Strategy for Personal and Commercial Lines Insurance Intermediaries (P&CLII)

In May, the FCA wrote to the Board of Directors of Personal and Commercial Lines Insurance Intermediaries (P&CLII) to outline its Supervisory Strategy. The letter focused on a number of key risks that the FCA consider Personal and Commercial Lines Insurance Intermediaries could pose to their consumers or markets, noting that they frequently see examples of harm caused by mis-selling, firms lacking customer-centric cultures, consumer outcomes not being appropriately considered and ineffective governance and control arrangements. Firms are reminded that good governance includes clear accountabilities, appropriate escalation channels, a robust risk framework and strong oversight by the Board. The key risks covered were:

- **Pricing practices and value for money:** Focused on Fair Product Value, Firms must have robust governance over pricing decisions, with senior managers effectively overseeing pricing practices and activities. Senior managers are required to provide annual confirmation that their firm has complied with the requirements. Ineffective oversight of remuneration within the distribution chain is also of concern as the use of high commission and administration fees by product distributors can significantly inflate an insurance premium which can lead to customers receiving poor value for money.

- **Product oversight and governance:** Firms are also reminded that customers should receive insurance products that meet their demands and needs and deliver fair claims outcomes. Product information should be clear, fair and not misleading and contracts should not contain ambiguous terms. Robust

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product governance arrangements must be in place and product manufacturers must carry out regular reviews of their products to ensure that consideration is being given to the best interests of customers and consumer outcomes. Manufacturers should ensure that distribution methods are appropriate and that products reach the intended target market.

- **Client Assets:** The FCA have identified that a substantial number of firms have inadequate CASS arrangements with insufficient oversight and control of their client money arrangements. Under Principle 10 of the FCA's Principles for Business a firm must arrange adequate protection for clients' assets when it is responsible for them, and failure to comply with the Principles for Business and the CASS rules are taken seriously by the FCA.

There were also some Additional Considerations noted by the FCA being:

- **Diversity and Inclusion (D&I) & Environmental Social and Governance (ESG) Considerations:** The FCA comment that there is growing evidence that diversity of thought, when part of an inclusive culture, supports better decision making by firms. However note that there is still a long way for the industry to go. Following its July 2021 Discussion Paper the FCA will be consulting on proposed new rules and guidance in Quarter 3 2022.
- **The Senior Managers and Certification Regime ('SM&CR'):** A reminder to firms on the importance of healthy cultures and effective governance. The FCA will hold individuals performing a Senior Management Function (SMF) accountable where they fail to take reasonable steps to ensure adequate governance, systems and controls, compliance or fail to treat customers fairly.
- **Cyber threats & operational resilience:** The FCA are reminding firms to proactively manage any operational resilience exposure and take appropriate steps to address any gaps that may exist within their current arrangements, and in particular should pay attention to their cyber security given the current heightened international tensions.
- **Regulatory Responsibilities:** The FCA expect all firms to be able to show consistently that fair treatment of customers is at the heart of their business model and to have an open and cooperative approach both with their customers as well as with the FCA. The FCA will take appropriate action if they find this in not the case.
- **Oversight of Appointed Representatives:** The FCA have reminded Principals of Appointed Representatives (ARs) of their ongoing obligation to provide adequate oversight of their AR's. Following consultation, the FCA will be issuing a policy statement with proposed rules and guidance to strengthen Principals responsibilities, increase the amount of information they receive on AR's from principals and work with the treasury on proposed legislative change.
- **Post-sale verification:** ICOBS 2.2R requires all customer communications including pre-sale questions and disclosure to be clear, fair and not misleading. However the FCA have become aware of firms carrying post sale activities to verify certain information given during the sales process, where the questions and information disclosures during the actual sales journey were not sufficiently clear, fair and non-misleading. ICOBS 5.2R also requires firms to only propose a contract of insurance that is consistent with a customer's demands and needs. Firms are reminded that carrying out post sale verification of information is not in line with the relevant ICOB's rules nor in line with Principle 6 of Treating Customers Fairly.

Find out more

Financial Ombudsman Service

- **Ombudsman News 169: Storm and flood damage complaints – information for financial businesses:** In light of the storms earlier this year, the FOS reissued guidance on the topic of storm damage, the types of complaints they see and how they assess them. Usually, the FOS receive complaints linked to declined claims following disputes over what constitutes a storm and whether the damage being claimed for was actually caused by a storm. The FOS list 3 questions that they will consider:

    - o Do they agree that storm conditions occurred on or around the date the damage is said to have happened?
    - o Is the damage claimed for consistent with what the FOS generally see as storm damage?
    - o Were storm conditions the main cause of the damage or were there other factors that meant the damage might have happened anyway?

To respond to these questions, the FOS will consider:

- o weather reports; The FOS want to be satisfied that there were storm conditions at the customer's location at or around the time the damage happened.
- o the condition of the property; In some cases it will be clear the property wasn't in a perfect condition before the storm. But that won't necessarily mean the damage was a result of wear and tear. The FOS weigh up the information to see whether the condition of the property or the storm was the primary cause of the damage.
- o the conditions the customer experienced in relation to the storm.

The policy wording itself will also be considered, and in the absence of 'storm' being defined within the wording, the FOS will apply its own definition which is a storm generally involves violent winds, usually accompanied by rain, hail or snow.

When determining whether a firm is at fault, the FOS will consider whether the Insurer has handled the claim promptly and fairly, and would expect insurers to have checked all parts of the policy wording, not just the storm section, to see whether the damage is covered elsewhere with the policy, for example, an accidental damage section. If the Insurer has declined a claim by reliance on a policy exclusion, the FOS would also expect to see evidence to support the decision.

If the FOS finds in favour of the complainant, it will explain to the firm what it needs to do to put things right. In respect of claims, it would usually be to process the claim payment in accordance with the terms and conditions of the policy or arrange for repairs to be carried out. It is likely that the FOS will instruct the firm to add interest at 8% to any payment made due to the delay in processing, and where applicable will also instruct an award for distress or inconvenience.

For further details see Storm damage Click here

- **Financial Ombudsman Service publishes its plans and budget for 2022/23**: Following publication of its Consultation Paper, the FOS has now issued its plan and budget for 2022/23. Key points to note are:

- The compulsory jurisdiction levy will increase by £10m to £106m. This may increase annual fees.
- The number of free cases is reduced from 25 to 3
- The individual case fee will remain at £750
- The FOS are expecting to deliver improved productivity and service standards, be more cost effective, have a more skilled and expert workforce and improve prevention by working with the industry, consumer bodies and UK regulators
- The FOS are seeing fewer complaints now in relation to Covid-19 however it is anticipated that more complaints related to price following the insurance pricing rules will be seen, and also potentially due to the new Consumer Duty

Find out more

Financial Services and Compensation Scheme

In May, the FSCS shared its latest compensation and overall levy forecast for 2022/23. Whilst the headline levy number has decreased since the first forecast in November, the amount of compensation the FSCS expects to pay customers during 2022/23 is still greater than the total paid last year, and it is expected to continue to rise.

- The annual levy for 2022/23 is now £625m, this is lower than the indicative levy announced in Outlook in November 2021, and a decrease from the final 2021/22 levy which was £717m.
- Although the levy forecast has decreased, the FSCS still expect compensation costs in 2022/23 to be higher than for 2021/22. The FSCS will publish final figures for 2021/22 in their Annual Report in the summer.
- A retail pool levy will not be required in 2022/23 as the FSCS no longer expect the Life Distribution & Investment Intermediation (LDII) class to breach its annual levy limit and require additional funding.
- The FSCS expect to pay compensation to customers who had experienced losses from over 1,000 different firms which failed in previous years.

The FSCS will continue to update its levy forecasting throughout the year and will share the next major update in the autumn edition of Outlook.

Find out more