

This week at the UK regulators

Thirty second guide: The week in overview

This week has seen a flurry of papers published by the UK regulators, in what has otherwise been a quiet week in terms of enforcement activity. The FCA and PRA both launched consultation papers on matters including remuneration and whistleblowing requirements in moves to strengthen the individual accountability regimes for banks and insurers. Each authority also published a policy statement setting out final rules on regulatory references. As a result of its policy statement, the PRA updated two supervisory statements on individual accountability in banking and insurance. It also published its final rules on buy-outs of variable remuneration. Meanwhile, the FCA published a hotly anticipated discussion paper on the treatment of the legal function under the Senior Managers and Certification Regimes (SM&CR), released four feedback statements taking stock of the first six months of the SM&CR and launched two further consultations on the extension of the application of the Code of Conduct sourcebook and implementation proposals for the Markets in Financial Instruments Directive II.

PRA updates supervisory statements on individual accountability

On 28 September 2016, the PRA updated SS28/15 and SS35/15 alongside the publication of PS27/16, a policy statement on regulatory references. For further detail on the policy statement, see the policy development table below. These supervisory statements set out the PRA's expectations regarding the 'duty of responsibility' in the banking and insurance sectors respectively, and reflect the PRA's approach to strengthening individual accountability. Both statements are being consulted on as part of CP34/16, a consultation paper which aims to improve the SMR and SIMR (for further detail, see the section on consultation papers below). The supervisory statements will be updated periodically as the individual accountability regimes continue to develop, including to reflect provisions in the Bank of England and Financial Services Act 2016.

<http://www.bankofengland.co.uk/pr/Pages/publications/ss/2016/ss2815update2.aspx>

<http://www.bankofengland.co.uk/pr/Pages/publications/ss/2016/ss3515update.aspx>

FCA highlights teething problems with SM&CR

In addition to various consultations on proposed measures to strengthen the SM&CR (see the section on consultation papers below), the FCA has looked back at the first six months of the SM&CR and, using its in-depth supervisory reviews of the Statements of Responsibilities and responsibilities maps supplied with grandfathering

notifications for firms, reported teething problems with the new regime. It has done so by way of four feedback statements, which cover (i) all UK banks, investment firms and building societies (FS16/6); (ii) branches of banks from outside the EEA (FS16/7); (iii) branches of banks from within the EEA (FS16/8); and (iv) credit unions (FS16/9).

<https://www.fca.org.uk/sites/default/files/fs16-6.pdf>

<https://www.fca.org.uk/sites/default/files/fs16-7.pdf>

<https://www.fca.org.uk/sites/default/files/fs16-8.pdf>

<https://www.fca.org.uk/sites/default/files/fs16-9.pdf>

FCA publishes Handbook Notice 37

On 23 September 2016, the FCA published Handbook Notice 37 summarising recent changes made to the Handbook, including:

- (i) changes that form part of the new individual accountability regimes for deposit takers and investment firms regulated by the PRA, providing firms with tools to share relevant information and better assess a new potential recruit's fitness and propriety;
- (ii) changes to update the name of an existing qualification provider and add three new appropriate qualifications to the Training and Competence sourcebook;
- (iii) changes to remove ineffective disclosure requirements from the Handbook which are not required by consumers and may contribute to consumer disengagement;
- (iv) changes to the FCA's rules to more closely align the Handbook with the FCA's policy intention in implementing

the Mortgage Credit Directive and minor consequential amendments;

(v) changes to secure an appropriate degree of protection for consumers who invest in UCITS and ensure the Handbook does not conflict with directly applicable EU regulations;

(vi) changes to improve the clarity of the Handbook text, improve the quality of the data that the FCA collects and lower the burden of reporting on firms;

(vii) changes to improve access to finance for SMEs;

(viii) changes to clarify the application of the Securities Financing Transactions Regulation and signpost readers towards relevant provisions to help their understanding; and

(ix) changes relating to authorised funds to introduce additional flexibility, clarify certain requirements, correct out-of-date references and delete obsolete provisions.

<https://www.fca.org.uk/sites/default/files/fca-handbook-notice-37.pdf>

Enforcement Notices

On 27 September 2016, the FCA published a decision notice cancelling the Part 4A permission of Michael Wilkinson (trading as Michael Wilkinson Mortgages) for failing to satisfy the suitability and appropriate resources Threshold Conditions. The decision notice has been referred to the Upper Tribunal.

<https://www.fca.org.uk/sites/default/files/michael-wilkinson-mortgages.pdf>

On the same day, the FCA published a notice of decision to cancel the registration of Murrayfield Management Limited (dated 10 August 2016) under the Money Laundering Regulations 2007 as a result of a failure to pay a charge imposed by the Authority.

<https://www.fca.org.uk/sites/default/files/murrayfield-management-ltd.pdf>

FCA warnings

Name of firm	Date of warning	Details
Quick Loans	29 September 2016	Not authorised https://www.fca.org.uk/news/warnings/quick-loans
Instant Lending	29 September 2016	Not authorised https://www.fca.org.uk/news/warnings/instant-lending
Guarantor Loans t/a LoansWithGuarantor.net	29 September 2016	Not authorised https://www.fca.org.uk/news/warnings/guarantor-loans
SkyQuid	29 September 2016	Clone firm https://www.fca.org.uk/news/warnings/skyquid-clone
Unsecured Loan Credit	26 September 2016	Clone firm https://www.fca.org.uk/news/warnings/unsecured-loan-credit-clone

Policy developments

FCA		PRA		
Proposed developments				
		Deadline for responses		
Consultation papers	<p>On 27 September 2016, the FCA published a consultation paper (CP16/25) on its proposals regarding new whistleblowing requirements applying to UK branches of overseas banks. The proposals include a new requirement to tell UK-based employees about the whistleblowing services offered by the FCA and PRA.</p> <p>https://www.fca.org.uk/sites/default/files/cp16-25.pdf</p>	9 January 2017	28 November 2016	<p>On 28 September 2016, the PRA published a consultation paper (CP33/16) on a consolidated approach document on remuneration. This will draw together the PRA's existing supervisory statements on proportionality, the application of malus and other elements of remuneration in relation to the Remuneration Part of the PRA Rulebook. It will also set out additional expectations of firms in relation to EBA guidelines on sound remuneration policies from 1 January 2017.</p> <p>http://www.bankofengland.co.uk/p/ra/Pages/publications/cp/2016/cp3316.aspx</p>
	<p>On 27 September 2016, the FCA published a consultation paper (CP16/26) on proposals to amend the Decision Procedure and Penalties Manual (DEPP) that will give guidance on how the FCA will enforce senior managers' duty of responsibility.</p> <p>https://www.fca.org.uk/sites/default/files/cp16-26.pdf</p>	9 January 2017	9 January 2017	<p>On 28 September 2016, the PRA launched its consultation (CP34/16) on a series of targeted improvements to the SMR and SIMR.</p> <p>http://www.bankofengland.co.uk/p/ra/Pages/publications/cp/2016/cp3416.aspx</p>
	<p>On 28 September 2016, the FCA published a consultation paper (CP16/27) on proposals to extend the application of the Code of Conduct sourcebook (COCON) to standard non-executive directors in banks, building societies, credit unions and dual-regulated investment firms (relevant authorised persons - RAPs) and insurance firms.</p> <p>https://www.fca.org.uk/sites/default/files/cp16-27.pdf</p>	9 January 2017	9 January 2017	<p>On 28 September 2016, the PRA published a consultation paper (CP35/16) on whistleblowing requirements for UK branches of non-EEA banks. This sets out similar proposals to those published by the FCA.</p> <p>http://www.bankofengland.co.uk/p/ra/Pages/publications/cp/2016/cp3516.aspx</p>

	<p>t/files/cp16-27.pdf</p> <p>On 27 September 2016, the FCA published a consultation paper (CP16/28) on proposals to help CRD 4 firms understand the rules that apply to their remuneration policies and practices. The proposals bring some of the FCA's provisions in line with the European Banking Authority guidelines on sound remuneration policies.</p> <p>https://www.fca.org.uk/sites/default/files/cp16-28.pdf</p> <p>On 29 September 2016, the FCA published a consultation paper (CP16/29) on its third set of implementation proposals for Markets in Financial Instruments Directive II (MiFID II), seeking views on the proposed changes to the Handbook. The paper deals with the conduct of business issues and matters not covered in two previous papers (CP16/19 and CP15/43), such as product governance and additional perimeter guidance.</p> <p>https://www.fca.org.uk/publications/consultation-papers/cp16-29-mifid-ii-implementation</p>	<p>28 November 2016</p> <p>31 October 2016 for chapter 16. Otherwise 4 January 2017</p>		<p>ra/Pages/publications/cp/2016/cp3516.aspx</p>
<p>Discussion papers</p>	<p>On 28 September 2016, the FCA launched a discussion paper (DP16/4) to clarify how and why the legal function is currently captured under the SM&CR and to consider whether it should continue to be part of the regime.</p> <p>https://www.fca.org.uk/sites/default/files/dp16-4.pdf</p>	<p>9 January 2017</p>		

Finalised Policy and guidance				
		Implementation/effective date		
Policy statements	<p>On 28 September 2016, the FCA published its final rules (PS16/22) on regulatory references as part of its wider move to strengthen accountability in banking and insurance. The feedback clarifies the information that firms are required to share with one another as part of recruiting to key roles.</p> <p>https://www.fca.org.uk/sites/default/files/ps16-22.pdf</p>	7 March 2017	N/A	<p>On 27 September 2016, the PRA provided feedback (PS25/16) on responses to 'Implementing risk-based levies for the Financial Services Compensation Scheme (FSCS) deposits class' (CP7/16). As a result of the responses, the PRA has removed the proposal that legacy cost levies are risk-based and has made technical amendments to the calculation methodology used to calculate the risk-adjustment for Deposit Guarantee Scheme (DGS) member contributions to the FSCS.</p> <p>http://www.bankofengland.co.uk/p/ra/Pages/publications/ps/2016/ps2516.aspx</p>
			N/A	<p>This feedback was accompanied by a statement of policy setting out the calculation methodology that the PRA uses, as the United Kingdom's designated authority in respect of the DGS, to calculate the risk-adjustment for DGS member contributions to the Financial Services Compensation Scheme.</p> <p>http://www.bankofengland.co.uk/p/ra/Pages/publications/sop/2016/calculatingrbl.aspx</p>
			N/A	<p>On 28 September 2016, the PRA published its final rules (PS26/16) on buy-outs of variable remuneration, amending the Remuneration Part of the PRA Rulebook intended to ensure that the practice of buy-outs does not blunt the beneficial incentive effects of the existing rules on malus and clawback, or allow employees to avoid the proper</p>

			7 March 2017	<p>consequences of their actions. The PRA will apply the rules to buy-out contracts concluded on or after 1 January 2017.</p> <p>http://www.bankofengland.co.uk/p/ra/Pages/publications/ps/2016/ps2616.aspx</p> <p>On 28 September 2016, the PRA published its final rules (PS27/16) on regulatory references, clarifying the information that firms are required to share with one another as part of recruiting to key roles.</p> <p>http://www.bankofengland.co.uk/p/ra/Pages/publications/ps/2016/ps2716.aspx x</p>
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