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Speech by David Rule, PRA on current issues in insurance supervision

On 26 September 2018, at the Annual Financial CEO Conference, David Rule, the PRA's Executive Director of Supervision gave a [speech](#) covering current issues in insurance supervision. In his speech Mr Rule:

- gave an update on progress by the International Association of Insurance Supervisors towards a global Insurance Capital Standard;
- talked about the fledgling UK market for Insurance-Linked Securities and the PRA's new insurers start up unit;
- reiterated the messages on underwriting and reserving in wholesale insurance and reinsurance markets from Anna Sweeney's Dear CEO letter earlier this year;
- discussed capital management, building on a Supervisory Statement the PRA published in May;
- shared some data collected by the PRA on the sensitivity of the capital surpluses of UK life insurers to various market movements and
- encouraged greater consistency in disclosure of such sensitivities by insurers as well as of the drivers of changes in their capital positions over time.

FSA publishes CP18/26: Claims management companies: how the FCA proposes to apply the SM&CR

On 20 September 2018, the FCA published a consultation paper, [CP18/26](#), which sets out its proposals for applying the senior managers and certification regime (SM&CR) to claims management companies (CMCs). The FCA will regulate CMCs from April 2019.

The FCA says that an [independent review](#) into CMCs found evidence of harm to customers, including harassment, aggressive sales tactics and business practices that reward the firm at the expense of its customers. It also highlighted issues with the fitness and propriety of senior managers within CMCs. The FCA's proposals aim to reduce misconduct in CMCs, by raising standards of governance, management and professionalism in the claims management sector.

Among other things, the FCA is proposing:

- to make a small number of senior roles within CMCs senior management functions (SMFs). The SMFs that apply to CMCs will depend on whether a CMC is a "Class 1" CMC, "Class 2" CMC, or other firm that is not a Class 1 CMC, such as a lead generator (for further details see chapter 4 of the consultation paper);
- to apply the certification regime to individuals who are not senior managers in CMCs, but who could have a significant impact on customers or the firm (see chapter 5);
- to require CMCs, at least once a year, to make sure that the individuals performing SMFs and certification functions are fit and proper to do their jobs (see chapter 6);
- to introduce standards for the conduct of nearly everyone who works in a CMC (see chapter 7).

Chapter 8 of the consultation gives details of transitional arrangements. The FCA says that although it will begin authorising CMCs as firms from April 2019, it is proposing not to begin authorising individuals in these CMCs until the SM&CR begins for solo regulated firms on 9 December 2019.

Comments are requested by 6 December 2018. The FCA will review the responses and publish its feedback, including the final text of the rules proposed in appendix 1 to the consultation paper, in the first quarter of 2019.

FCA Regulation round-up September 2018

On 20 September 2018, the FCA published its [Regulation round-up September 2018](#).

Among other things, this issue contains items on **insurance brokers' due diligence on insurers**: the FCA refers to its [webpage](#) on insurance brokers due diligence on insurers, which sets out its expectations that insurance brokers should demonstrate that they have carefully considered the

insurers that they place their customers' business with. The webpage lists examples of what brokers should consider as part of their insurer due diligence with links to relevant web pages. The FCA says that it is planning further work to verify that insurance brokers are conducting appropriate due diligence on the insurers they use.

FCA publishes update on general insurance value measures

On 18 September 2018, the FCA updated its [webpage](#) on general insurance value measures to give the information that, following the publication in March 2018 of its second set of data in its general insurance value measures pilot, it is now collecting a third set of value measures data across three measures: claims frequency; claims acceptance rates; and average claims payout.

The FCA intends to publish the data early in 2019 alongside a consultation on rules requiring the regular reporting of general insurance value measures data by firms to the FCA. It says that this will extend the scope of value measures across a wider range of general insurance products and to all relevant general insurance firms.

PRA publishes CP20/18: Strengthening accountability: implementing the extension of the SM&CR to insurers (Part 2)

On 17 September 2018, the Prudential Regulation Authority (PRA) published a consultation paper, [CP20/18](#), which sets out proposed rules for some consequential changes, and minor administrative amendments, related to the extension of the senior managers and certification regime (SM&CR) to insurers.

The consultation paper includes proposals for some technical consequential changes relating to the "current approved person approval" status of those individuals who will be in a "designated senior management function" following the commencement of the extension of the SM&CR to insurers.

The extended SM&CR for insurers will come into effect from 10 December 2018. The PRA proposes that the rule changes in the consultation paper will therefore apply from the same date (other than one minor administrative change in annex H of the appendix which will apply from 1 January 2019).

The appendix to the consultation paper contains the draft Rulebook instrument, the PRA Rulebook: Solvency II Firms and Non Solvency II Firms: Senior Insurance Managers Regime (Amendment) (No 3) Instrument 2018.

Comments are requested by 17 October 2018, so that final rules can be made in advance of implementation in order to give firms and industry participants certainty on the technical details of the regime prior to its commencement on 10 December 2018.

The PRA has also published a related [note](#) on redesignation of senior insurance management functions (SIMF) to senior management functions (SMF), and the change-over to statements of responsibilities by insurers. The note gives the information that:

- on 10 December 2018 SIMFs will be automatically redesignated as SMFs and, where appropriate, the reference number for certain SIMFs will also change automatically;
- insurers will need to update their scope of responsibilities record to reflect the change to statement of responsibilities;
- firms do not need to submit an updated statement of responsibilities record to the PRA, but will be expected to have the updated statement of responsibility available should the relevant record be requested by the PRA as part of ongoing supervision.

The actuarial function, underwriting, capital and reserving: PRA Dear Chief Actuary letter

On 17 September 2018, the PRA published the [text](#) of a letter sent by its Chief Actuary for General Insurance, James Orr, to chief actuaries.

The letter gives details of the focus of the PRA's ongoing supervisory approach:

- the PRA's discussions with firms and reviews of actuarial function reports have in some cases identified insufficient challenge, or a lack of appropriate independence and objectivity in the views being expressed. The PRA reminds firms of the weaknesses mentioned in its 31 May 2018 [Dear CEO letter](#) on market conditions facing specialist general insurers. It says that these weaknesses are relevant to the actuarial function's specific responsibilities and the PRA's ongoing supervisory work will consider the adequacy of firms' responses to them;
- as mentioned in the above Dear CEO letter, the PRA continues to observe a disconnect between some firms' perceptions of current price adequacy and their views on recent risk adjusted rate changes. Related to this, the PRA's review of actuarial function reports pointed to insufficient consideration of premium adequacy. The PRA will be undertaking further work on business planning, underwriting policies and capital, and will share its findings in due course;
- the letter gives a detailed summary of the PRA's targeted reviews of firms' reserving. The PRA says that it believes all insurers could benefit from assessing the areas where their operations might require further development, and considering the actions they might take if so.

If firms wish discuss the content of the letter the PRA says they should contact their usual supervisory contact in the first instance.

Data protection if there is no Brexit deal: Department for Digital, Culture, Media & Sport technical notice

On 13 September 2018, the Department for Digital, Culture, Media & Sport published a [technical notice](#) on how the collection and use of personal data would change if the UK leaves the EU in March 2019 with no deal.

The technical notice is one of a series which sets out information to allow businesses and citizens to understand what they would need to do in a no deal scenario, so they can make informed plans and preparations. It sets out the actions UK organisations should take to enable the continued flow of personal data between the UK and the EU in the event that the UK leaves the EU in March 2019 with no agreement in place.

If the UK leaves the EU in March 2019 with no agreement in place regarding future arrangements for data protection, there would be no immediate change in the UK's own data protection standards. This is because the Data Protection Act 2018 would remain in place and the European Union (Withdrawal) Act 2018 would incorporate the General Data Protection Regulation into UK law to sit alongside it.

Personal data could continue to be sent from the UK to the EU, although the UK Government would keep this under review. The EU has an established mechanism to allow the free flow of personal data to countries outside the EU, namely an adequacy decision. However, the European Commission has stated that the decision on adequacy cannot be taken until the UK is a third country.

The legal framework governing transfers of personal data from organisations (or subsidiaries) established in the EU to organisations established in the UK would change on exit. The notice recommends that organisations proactively consider what action they may need to take to ensure the continued free flow of data with EU partners. For the majority of organisations the most relevant alternative legal basis would be standard contractual clauses.

The Information Commissioner's Office will remain the UK's independent supervisory authority on data protection and the UK Government will continue to push for close co-operation and joined up enforcement action between the Commissioner's office and EU data protection authorities.

What if there is no Brexit deal? - House of Commons Library briefing paper

On 10 September 2018, the House of Commons Library published a 172 page [briefing paper](#) on what could happen if the EU and UK negotiators do not agree a withdrawal agreement in time and the UK has to leave the EU on 29 March 2019 without one and with no framework for future relations.

The paper examines how such a situation might come about, the constitutional implications for the UK and the devolved administrations, and what the impact might be in a range of policy areas, including financial services.

The Bank of England and Financial Services Act 2016 (Commencement No. 5 and Transitional Provisions) Regulations 2018

On 10 September 2018, the above Regulations, [SI 2018/990](#), were made and published.

The Regulations bring into force on 13 September 2018, 10 December 2018 and 10 December 2019 certain provisions of the Bank of England and Financial Services Act 2016 (the Act) relating to Part 5 of the Financial Services and Markets Act 2000 (FSMA).

Regulation 2 brings into force section 21 of the Act for the purposes of introducing Schedule 4 to that Act only in relation to insurers. All paragraphs of that Schedule are brought into force on 10 September 2018 for the purpose of making rules. All paragraphs of that Schedule, except paragraph 11, are brought into force on 10 December 2018, for all other purposes, in relation to insurers. Paragraph 11 of that Schedule is brought into force on 10 December 2019, for all other purposes, in relation to insurers.

Regulation 3 provides that prohibition orders, together with warning notices and decision notices related to prohibition orders, are not affected by any changes made by the commencement of the provisions in regulation 2.

Regulation 4 provides that an insurer must prepare a "statement of responsibilities" where the appropriate regulator has deemed an approval under section 59 of FSMA (condition A), a person has been granted an approval by the PRA under section 59 of FSMA prior to the commencement of these Regulations (condition B), or an application has been made to the Prudential Regulation Authority for approval under section 59 of FSMA between 1 January 2016 and 9 December 2018 and the approval has been granted on or after 7 March 2016 (condition C).

Regulation 5 provides that the requirement to provide a revised statement of responsibilities under section 62A of FSMA applies to statement of responsibilities prepared under regulation 4 of these Regulations.

Regulation 6 provides that the appropriate regulator may comply with any requirement under Part 9A of FSMA to publish draft rules or other documents, with or without consulting upon it, by anything done by the appropriate regulator before 11 November 2018.

Draft EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 laid before Parliament

On 5 September 2018, a draft version of the [EEA Passport Rights \(Amendment, etc., and Transitional Provisions\) \(EU Exit\) Regulations 2018](#) was laid before Parliament and published, together with a [draft explanatory memorandum](#). HM Treasury had previously published a draft version of the Regulations in July 2018.

The draft Regulations will amend references to EEA passporting rights in domestic legislation, which will become deficient as a result of the UK's exit from the EU. They will also implement a temporary permissions regime.

In the draft Regulations:

- Part 1 makes general provision as to citation, commencement and interpretation;
- Part 2 amends Part 3 of the Financial Services and Markets Act 2000 (FSMA) (authorisation and exemption) to repeal provisions dealing with the authorisation to carry on regulated activities, within the meaning of Part 2 of that Act, granted to EEA firms (Schedule 3 to that Act) and Treaty firms (Schedule 4 to that Act). The Schedule to the draft Regulations makes amendments consequential upon these repeals, as follows;
- Part 3 Chapter 1 provides modifications to Part 4A of FSMA for the purposes of the transitional provisions that follow;
- Part 3 Chapters 2 and 3 provide for a person authorised to carry on regulated activities before exit day by virtue of the provisions repealed by Part 2 to continue to do so, by treating the person as having the requisite permission under Part 4A of FSMA, pending the determination of an application for permission, or variation of a permission, under that Part;
- Part 3 Chapter 4 provides the procedure by which a person may be so treated;
- Part 3 Chapter 5 provides for the period during which a person may be so treated;
- Part 3 Chapter 6 provides saving provision;
- Part 3 Chapter 7 provides general and interpretative provision;
- Part 4 provides miscellaneous transitional provision in respect of other areas of financial services legislation which have a bearing on the provisions in Part 3;
- Part 5 provides a power for HM Treasury to amend certain time limits set by the modifications made by these Regulations.

Most of the provisions in the Regulations concerning the temporary permissions regime will come into force on the day after the day on which the Regulations are made. Regulations 2 (Repeal of passport rights, etc.), 3 (Consequential amendments), 4 (Saving provision: tax) and 24 (Financial Services Compensation Scheme - modifications of Part 15 of FSMA) will come into force on exit day.

New insurer start-up launched by PRA and FCA

On 3 September 2018, the PRA published its [Regulatory Digest for August 2018](#). The publication highlights key regulatory news and publications delivered for the month.

Among other things, the digest gives the information that a new insurers start-up unit NISU was launched jointly by the PRA and the FCA on 17 August 2018. A [webpage](#) on the NISU has also been published. This says that the NISU is part of the regulators' ongoing work to improve the authorisation process for prospective new insurers in the UK. The regulators want the process, information and materials to be helpful for potential applicants so that they can have an effective and efficient way of working together and lead to an improved quality of application when the time comes.

The PRA and the FCA have published a [guide](#) to the NISU, which includes four sections on the stages involved in becoming an insurer in the UK:

- **early stages:** this section goes through the basics, including whether setting up an insurer is the right thing for the potential applicant and what the alternatives might be;
- **pre-application:** this section includes details of the pre-application meetings which, in the regulators' experience, have been helpful to both sides as they share their expectations to facilitating submission of an application that is as complete as possible;
- **application:** this section includes information about what the regulators will assess and how long it could take for them to give the applicant a decision;

- **after authorisation:** this section contains information on what regulatory life is like as a new insurer in the UK and what a new insurer can expect in the early days of being supervised and in subsequent years.

A set of [frequently asked questions](#) (FAQs) on the NISU has also been published. The PRA and the FCA say that they will monitor questions that they receive and update the FAQs as needed and will include an update on the NISU webpage.

The PRA and the FCA welcome views from users of the NISU about what is working well and what can be improved. As their consideration of further developments relating to the authorisation of new insurers continues, the PRA and the FCA say that they are also interested to hear views on perceived barriers to entry in the insurance industry and possible measures to address them. Feedback and input should be emailed to NewInsurerStartupUnit@bankofengland.co.uk.

Payment Protection Insurance Market Investigation Order 2011: CMA limited review decision

On 2 August 2018, the Competition and Markets Authority (CMA) [announced](#) that it was proposing to launch a limited review of the [Payment Protection Insurance Market Investigation Order 2011](#) (the Order) in response to the introduction of the Insurance Distribution Directive (IDD) and it published an [invitation to comment](#) containing two possible options for variation of the Order.

On 6 September 2018, the CMA updated its [webpage](#) on the review of the PPI Order to give the information that following consultation and having taken into account the submissions of a number of parties, it has decided to undertake a review of the PPI Order and published the [decision to undertake the review](#).

The CMA was reviewing the PPI Order to assess whether its information requirements remain appropriate in light of the requirements of the IDD. The purpose of the review is to ensure consumers continue to receive appropriate information and that suppliers of PPI have clear and consistent obligations for the information they need to provide to consumers. The review focused exclusively on this matter and the CMA did not carry out a full review of the PPI Order. The CMA invited views supported by relevant evidence concerning the three options for variation of the PPI Order outlined in its decision to undertake the review.

Comments were requested by 21 September 2018. On 27 September 2018, the CMA announced that it had made a provisional decision that a relevant change of circumstances has occurred and it would be appropriate to vary the Order. The CMA has launched a consultation on this decision which closes on 29 October 2018.

INTERNATIONAL

IDD: EIOPA publishes a new webpage to identify registered intermediaries

The Insurance Distribution Directive is due to be implemented by member states by 1 October 2018. Under the Directive insurance intermediaries must be registered and the European Insurance and Occupational Pensions Authority (EIOPA) is required to establish, publish on its website and keep up to date a single electronic register containing details of insurance, reinsurance and ancillary insurance intermediaries which have notified their intention to carry on cross-border business. On 28 September 2018, EIOPA published a new [webpage](#) listing hyperlinks to national registers. This is a provisional database as EIOPA is assessing how best to establish a long term online register.

Sustainable finance: EIOPA online survey

On 12 September 2018, EIOPA launched an [online survey](#) and a related [webpage](#) on the integration of sustainability risks and sustainability factors in the delegated acts under the Insurance Distribution Directive (IDD) and the Solvency II Directive.

On 1 August 2018, EIOPA published a European Commission [request for advice](#) addressed to EIOPA and the European Securities and Markets Authority (ESMA) regarding the Commission's May 2018 [package of measures](#) on sustainable finance. EIOPA and ESMA were requested to provide technical advice supplementing the initial package of proposals and to advise the Commission on potential amendments to, or introduction of, delegated acts under, amongst others, the IDD and the Solvency II Directive with regard to the integration of sustainability risks and sustainability factors.

In view of the novelty of this topic, EIOPA says that it would like to involve market participants and stakeholders at an early stage seeking their input to build up a suitable evidence base for the thorough development of robust policy recommendations, which will be consulted on at a later stage.

Therefore, EIOPA invites market participants and stakeholders to participate in the survey and to comment on the questions raised by 3 October 2018. EIOPA and ESMA are invited to provide their final technical advice to the Commission by 30 April 2019.

SOLVENCY II

Commission Delegated Regulation aligning the Solvency II Delegated Regulation with the Securitisation Regulation published in the Official Journal

On 10 September 2018, the text of [Commission Delegated Regulation \(EU\) 2018/1221](#) of 1 June 2018 amending Delegated Regulation (EU) 2015/35 as regards the calculation of regulatory capital requirements for securitisations and simple, transparent and standardised securitisations held by insurance and reinsurance undertakings was published in the Official Journal of the European Union.

The Delegated Regulation will enter into force on the twentieth day following that of its publication in the Official Journal. It will apply from 1 January 2019.

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