March 2019

Risk & Compliance

What’s Inside...

• The European Banking Authority publishes revised Guidelines on outsourcing arrangements
• FCA publishes near-final rules and guidance on adapting the regulatory framework in a no-deal Brexit
• UK Finance Customer leaflet to raise awareness of interest-only mortgages

With the UK due to leave the European Union on 29 March 2019, this could be seen as a quiet month for regulatory development in the traditional sense. However, with just a few weeks to go there has been considerable activity in the form of additional guidance on existing regimes and the development of statutory instruments to ensure regulatory continuity and stability after exit day.

Since June 2018, the Treasury has been busy transposing EU law into UK law which has been one of the largest legislative projects ever undertaken in the UK.

Due to the scale and complexity of this project, the FCA and other key regulators have been delegated to assist, with changes being made to binding technical standards and their respective handbooks to ensure that the financial legislative framework remains consistent should we leave the EU next month without a deal.

As we reach the final weeks of negotiations and onwards, the regulators are expected to continue to focus their resources accordingly, to ensure a smooth transition. This can be demonstrated through the FCA’s recent announcement that it will be hosting Brexit briefings to help regulated firms gain a clearer understanding of the impact that Brexit may have on their business.

This month, the European Banking Authority has published final guidelines on outsourcing arrangements for financial institutions. Many of the services that Target provides fall within scope of these requirements, making this piece an important consideration for both Target and its clients.

The Information Commissioner’s Office and the FCA have entered into a Memorandum of Understanding which outlines how they will share information to help each other discharge their regulatory functions. This co-operation of the regulators will enhance the supervision of firms processing of personal data and it will be interesting to see how this will shape future enforcement action concerning data breaches.

Happy reading!

Foreword by

TERRY BAXTER
Target Group Director of Risk and Compliance
This Month’s Headlines

General

• The European Banking Authority publishes revised Guidelines on outsourcing arrangements
• FCA publishes near-final rules and guidance on adapting the regulatory framework in a no-deal Brexit
• UK Finance publishes a consumer information leaflet for victims of financial abuse
• FCA and the Information Commissioner’s Office enter into a Memorandum of Understanding
• Financial Stability Board reports on Fintech and financial stability
• Financial Ombudsman Service issue 147 of Ombudsman News: Dealing with debt

Consumer Credit

• FCA expands the Information from Lenders scheme to all consumer credit firms

Mortgages

• UK Finance Customer leaflet to raise awareness of interest-only mortgages

Investments

There are no material updated this month for this sector

Financial Crime

• HM Treasury and the Office of Financial Sanctions Implementation publishes guidance on financial sanctions if there is no BREXIT deal

Enforcement

• The Office of Financial Sanctions Implementation imposes its first monetary penalty

Dates for the diary

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The European Banking Authority publishes revised Guidelines on outsourcing arrangements

These guidelines will replace the Committee of European Banking Supervisors (CEBS) guidelines on outsourcing issued in 2006, with the aim of harmonising and enhancing the outsourcing arrangements between financial institutions and third party firms. The guidelines cover the life cycle of an outsourcing arrangement setting out specific provisions for financial institutions’ governance frameworks and the related supervisory expectations and processes, with a particular focus on the continuity of critical or important functions including:

- Identifying critical or important functions;
- Contractual requirements for the outsourcing of critical or important functions;
- The application of sound governance and oversight arrangements;
- Business continuity planning and testing;
- Termination rights; and
- Exit strategies.

The European Banking Authority (EBA) has emphasised that the responsibility for ensuring activities are compliant can never be outsourced. To this end, the financial institutions management body should ensure that sufficient resources are available to appropriately support and assure the performance of its responsibilities.

The guidelines will apply to all new arrangements entered into from 30 September 2019. Existing arrangements will need to be reviewed and amended by 31 December 2021, if not closed prior to this date.

FCA publishes near-final rules and guidance on adapting regulatory framework in a no-deal Brexit

The FCA has published near-final rules and guidance on adapting the financial services regulatory framework if the UK leaves the European Union (EU) on 29 March 2019, without an agreement. The FCA has described its baseline approach will be to treat the EU and its member states in the same way as non-EU or third countries after exit day. The FCA has also described its approach to correcting regulatory deficiencies created by Brexit related statutory amendments:

- The FCA has amended its Handbook to remove references to EU law and replaced them with references to UK law. Amendments will also be made to reflect changes in the provisions afforded to cross border activities. Additionally, named EU institutions will be replaced with a UK equivalent. EU references may however be retained where there is a specific reason to do so.
- The FCA will not be carrying out a detailed review of existing non-handbook guidance or its forms to identify and resolve provisions that would no longer have their intended effect after Brexit. Instead, firms are expected to sensibly interpret non-handbook guidance and forms in a way that takes into account that the UK is no longer part of the EU. Further guidance has been provided on this requirement in Appendix 4 and Appendix 5 of the Policy Statement.

The FCA will publish the final instruments on 28 March 2019 if the withdrawal agreement between the UK and the EU is not ratified.

UK Finance publishes a consumer information leaflet for victims of financial abuse

In September 2018, UK Finance introduced a voluntary Financial Abuse Code of Practice with the purpose of improving the support available for victims of financial domestic abuse. The code is based on six principles outlining specific actions that firms can take to increase awareness of the issue and enhance their policies to help victims regain control of their finances.

This month, UK Finance has published an industry wide Consumer Information leaflet which under Principle 1 of the code, firms may make available to consumers. The leaflet will support the industry in providing consistent information about how financial institutions can help victims of financial abuse including:

- What financial abuse looks like;
- Individuals who are at a greater risk of falling victim to financial abuse;
- Ways in which individuals can protect their finances; and
- Ways in which financial services providers can help individuals regain control of their finances.
1.4 FCA and the Information Commissioner's Office enter into a Memorandum of Understanding

The FCA has published a Memorandum of Understanding (MoU) with the Information Commissioner's Office (ICO) which establishes a framework for co-operation, co-ordination and information sharing between the two regulators. The purpose of the MoU is to enable both the ICO and the FCA to share relevant information which enhances their ability to exercise their respective functions. As part of the MoU both parties have agreed:

• Each regulator will make rules and / or policies in pursuit of their separate objectives. The parties will seek to understand and where appropriate collaborate and co-ordinate work on their respecting policies that have a material effect on the other’s objectives; and

• The parties will liaise closely to ensure that their separate awareness activities are complementary. Where appropriate, both regulators will share communication and publication plans to facilitate joined up messages and effective resource planning.

The ICO and the FCA recognise that there are areas in which they have complementary functions and powers. They will therefore seek to ensure that in these cases, the most appropriate body will commence and lead investigations.

1.5 Financial Stability Board reports on FinTech and financial stability

The report considers both the potential benefits and risks that technological innovation poses to the stability of financial services. Some key considerations from the Financial Stability Board’s (FSB) analysis of the relationship between financial institutions and FinTech include:

• Partnering allows relatively small FinTech firms to operate unburdened by financial regulation while still benefiting from access to a significant client base. At the same time, firms benefit from access to innovative technologies that provide a competitive edge;

• Services that have traditionally been provided through banks and other institutions such as credit and payment services can now be offered through FinTech firms. FinTech credit currently represents a small proportion of the credit market but is growing rapidly. This could negatively impact the profitability of banks and financial institutions in the future;

• BigTech firms could have a competitive edge over smaller FinTech firms due to having a recognisable brand and benefiting from a strong financial position. Participation of BigTech firms could result in less competition in the long run by increasing market concentration. An example of this can be found in China, where two firms account for 94% of the mobile payments market; and

• Reliance by financial institutions on third party data service providers for core operations whilst currently estimated to be low is expected to increase. A high degree of concentration among service providers could increase the risk of service disruptions impacting the integrity of the wider financial market.

1.6 Financial Ombudsman Service issue 147 of Ombudsman News: Dealing with debt

This month’s issue of Ombudsman News published by the Financial Ombudsman Service (FOS) focused on dealing with debt, highlighting the importance of empathy and flexibility when dealing with customers who are in financial difficulty. Whilst the FOS is reassured that the majority firms adhere to appropriate codes of conduct in such circumstances, given the often complex nature of indebtedness and its interconnectedness with vulnerability, the FOS has provided examples of poor conduct for firms to consider. Some of the failings observed by the FOS include:

• Excessive contact for payment and failing to uphold a customer’s legitimate request for written communication only;

• Chasing unenforceable or statute barred debt;

• Trying to collect debt that had already been paid; and

• Failing to identify vulnerabilities and subsequently offer an appropriate level of support.

The impact of these failings caused significant distress to the affected customers, some of whom were subsequently awarded compensation from the moderate and severe band under the powers awarded to the FOS.
## Consumer Credit

### 2.1

**FCA expands the Information from Lenders scheme to all consumer credit firms**

The Information from Lenders (IFL) scheme has been in place for the mortgage sector since 2006. It provides a channel for lenders to report intermediaries that they suspect of being involved in fraud relating to a regulated financial product.

This month, the FCA has announced its extension to all consumer credit firms. Whilst the scheme remains voluntary, the FCA has reminded lenders of their responsibility for ensuring that their businesses are not vulnerable to fraud by applying appropriate fraud detection and prevention strategies, adequate systems and controls and having effective oversight arrangements in place. The FCA has provided the following guidance for lenders who consider making IFL referrals:

- **IFL subjects** - The IFL process is intended for lenders to submit information on intermediaries, credit brokers, or dealers that have, or are suspected to have, acted fraudulently;

- **Referrals** - Whilst it can be difficult for lenders to complete a detailed investigation in every case, it would be helpful for referrals to include fully investigated cases, in which the complicity of the intermediary in the fraud has been proved; and

- **External bodies** - The FCA has communication channels in place with organisations such as HMRC, Action Fraud and Trading Standards, however if lenders deem intelligence serious enough to report to these bodies, it should be reported to the relevant body as well as the FCA.

## Mortgages

### 3.1

**UK Finance Customer leaflet to raise awareness of interest-only mortgages**

To increase awareness of the options and to help encourage interest only mortgage borrowers to speak to their lenders, UK Finance has produced a leaflet outlining how customers can understand and take control of their circumstances.

The leaflet has been produced in recognition of on-going industry and regulatory concerns with regards to a proportion of borrowers who took their loans prior to tighter regulatory requirements surrounding the provision of interest only mortgages. As a result, these consumers risk losing their homes as they may not have a credible repayment strategy to redeem the full amount at maturity.

In 2013, the FCA commissioned an Experian report which included a residential interest only mortgage maturity horizon, identifying three peak maturity periods. The first peak (2017-2018) has just passed and primarily affected individuals approaching retirement with high incomes, high assets and high levels of equity in the property at the end of the term. However, the next two peaks, which cover 2027-2028 and 2032 are characterised by less affluent consumers with concentrations of high indebtedness and low or negative equity in the property at the point of maturity. For these consumers, it is crucial that engagement with their lender begins as early as possible to ensure the best solution is reached.

## Financial Crime

### 4.1

**HM Treasury and the Office of Financial Sanctions Implementation publishes guidance on financial sanctions if there is no BREXIT deal**

Currently, the UK is required to implement and enforce sanctions regimes agreed by the UN Security Council and by the EU. If the UK leaves the EU on 29 March 2019 without a deal, the Government will look to carry over all existing EU sanctions regimes through new regulations formed under the Sanctions and Anti-Money Laundering Act 2018 (the Sanctions Act). Any sanctions regimes not addressed through the Sanctions Act by 29 March 2019 will continue as retained EU law under the EU (Withdrawal) Act 2018. This means there will be no gaps in implementing existing sanctions regimes.

In preparation of a no deal scenario, the Treasury and the Office of Financial Sanctions Implementation (OFSI) have published general guidance on financial sanctions. This guidance is for information only and will not apply until the UK officially leaves the EU, either on 29 March 2019 if no deal can be negotiated, or if an agreement is reached, following an implementation period which will run to 31 December 2020.
5.1

The Office of Financial Sanctions Implementation imposes its first monetary penalty

The Office of Financial Sanctions Implementation (OFSI) has imposed its first monetary penalty under the Policing and Crime Act 2017. The Act gives the OFSI powers to enforce fines up to a maximum of £1m for financial sanctions breaches.

In this case, R. Raphael & Sons plc trading as Raphaels Bank dealt with funds valued at £200 belonging to a person designated under the sanctions regime. Raphaels Bank informed the OFSI when they became aware of the breach and the OFSI reduced the penalty by 50% from £10,000.00 to £5,000.00 in consideration of Raphaels Banks’ disclosure and cooperation.
# Dates for the diary...

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<th>Early 2019</th>
<th>FCA Duty of Care feedback on responses</th>
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<td>March 2019</td>
<td>FCA Thematic Review of debt management</td>
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<td>March 2019</td>
<td>FCA Multi-firm work regarding policies towards vulnerable consumers</td>
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<td>29 Mar 2019</td>
<td>UK is Scheduled to Withdraw from the EU</td>
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<td>01 Apr 2019</td>
<td>SME access to FOS implementation deadline</td>
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<td>April 2019</td>
<td>FCA Planned thematic work on the treatment of vulnerable consumers within Non-Bank Lenders</td>
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<td>April 2019</td>
<td>FCA Guidance on vulnerability Consultation Paper</td>
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<td>13 May 2019</td>
<td>Government responses for implementing the Guardianship Act 2017</td>
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<td>29 Aug 2019</td>
<td>PPI Complaints Deadline</td>
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<td>30 Sep 2019</td>
<td>EBA guidelines on Outsourcing Arrangements comes into force for new arrangements</td>
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<td>09 Dec 2019</td>
<td>SM&amp;CR Implementation deadline</td>
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<td>10 Jan 2020</td>
<td>Implementation deadline for the fifth anti-money laundering directive</td>
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<td>TBC</td>
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## FCA scheduled reviews...

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<td>Consumer Credit Act retained provisions review</td>
<td>Consultation Paper</td>
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<td>Debt management Sector Review</td>
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<tr>
<td>Outcomes testing on auto-advice</td>
<td>Review</td>
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<td>Approach to Market Integrity</td>
<td>Report for Consultation</td>
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<tr>
<td>Savings Adequacy</td>
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<td>Assessing claims inflation in General Insurance</td>
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