Being better informed

FS regulatory bulletin

FS regulatory insights

November 2024

In this month's edition:

- FCA calls on firms to focus on non-financial misconduct
- HM Treasury consults on regulation of Buy-Now-Pay-Later lending
- FCA launches premium finance market study
- Basel Committee updates on liquidity risk work
- FCA sets out supervisory priorities for retail banks and building societies

Executive summary

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Welcome to this edition of 'Being better informed', our monthly FS regulatory bulletin, which aims to keep you up to speed with significant developments and their implications across all the financial services

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The month of October saw a return to the regular cadence of regulatory developments from both Government and regulators, with progress made against a wide range of policy initiatives, and updates to the forward-looking financial services agenda.

The Chief Executives of both the PRA and FCA delivered their annual City Dinner speeches at the Mansion House. Both speeches majored on the central theme of 'competitiveness', with Nikhil Rathi and Sam Woods reflecting on the work of their respective organisations to embed their secondary objective for international competitiveness and growth. Both were keen to articulate the range of measures the regulators have already undertaken to support this agenda, and the further steps they plan to take, such as a PRA consultation on deferral requirements under the regulator's remuneration rules. They acknowledged the challenges facing the sector, with Rathi addressing industry concerns in relation to the FCA's 'name and shame' proposals, and the frequency and scale of regulatory data requests.

The UK regulators also published an interim update to the Regulatory Initiatives Grid. Reflecting a degree of re-prioritisation and the backlog of work driven by the change in Government, the update covers planned initiatives for Q4 2024 and Q1 2025, rather than a longer time period. The Grid includes information on new initiatives and timings, including an FCA consultation on the definition of capital under MiFIDPRU for investment firms in Q1 2025, and an FCA cross-sector review of rules and guidance to firms when conducting firm-led redress exercises, also planned for Q1 2025.

Elsewhere, the FCA published findings from its survey into non-financial misconduct. The survey of over 1,000 firms was sent to wholesale banks, wholesale brokers, and London market insurers and intermediaries in February 2024. While the findings are specific to the firms in the sectors surveyed, they will also be of interest to other FCA-regulated firms. The FCA intends to publish final rules and guidance by the end of this year on embedding non-financial misconduct within regulatory requirements for all FSMA firms with a Part 4A permission, as set out in CP23/20, as part of proposals for a new diversity and inclusion framework. The regulator expects firms to reflect on the survey findings and how they compare to peers, and to consider at a board and senior management level whether they need to improve their culture, how they identify and manage risks, and how they address non-financial misconduct. Our At a glance briefing provides further details.

For the insurance sector, the FCA announced a market study into the provision of premium finance for motor and home insurance. Alongside the study, the Government launched a taskforce to address the rise in motor insurance premiums. It will focus on groups that are disproportionately affected by high prices, including ethnic minorities, those on lower incomes and elderly and young drivers. Through its market study, the FCA aims to understand whether premium finance offers fair value and whether competition is functioning effectively in the market. The study will examine market dynamics, including the roles of insurers, intermediaries, and specialist premium finance providers. The FCA plans to publish a progress update and proposed next steps in H1 2025.

Elsewhere, HM Treasury launched a consultation on its approach to the regulation of Buy-Now-Pay-Later (BNPL) lending. Measures to bring BNPL lending under FCA regulation have been in the pipeline for several years, however, the latest consultation represents a concrete step in the journey to make this happen.

The FCA set out its supervisory approach to a number of sectors in a suite of portfolio letters covering retail banks, building societies, mortgages lenders, and financial advisers. The letters outline where the regulator is expected to focus its attention over the next 12 months - covering issues including Consumer Duty compliance, the treatment of vulnerable customers, operational resilience and sustainable finance. The FCA's Consumer Duty supervisory work continues, meanwhile, with the regulator publishing findings from its multi-firm review into how the payments sector has implemented the Duty. Of the 23 firms reviewed, the FCA rated just over half as satisfactory, with some firms requiring significant work to meet its expectations. Our At a glance provides more details.

Finally, the Court of Appeal ruled that it was unlawful for car dealers to receive a commission from a lender providing motor finance to a customer unless it was disclosed to the customer and they gave informed consent to the payment. In a speech, FCA Chief Executive Nikhil Rathi said the regulator is in close contact with the industry, Financial Ombudsman Service and Government to monitor the impact of the judgment.

Please read on to find out more about these and other developments. You can also visit our PwC webpage for further regulatory insights, including The Framework for Growth and UK Financial Services, which captures our thinking on the role that the Government and the financial services industry can play in driving growth across the industry and the wider economy, and our latest podcast episode exploring the topic of financial inclusion.

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Artificial intelligence

BoE discusses AI's impact on financial stability

Sarah Breeden, Deputy Governor for Financial Stability at the Bank of England (BoE), discussed the impact of artificial intelligence (AI) on financial stability in a speech on 31 October 2024. She focused on the risks and regulatory implications at both macroprudential and microprudential levels.

On the microprudential level, she emphasised the need for financial firms to understand and manage their AI models as they evolve, addressing challenges such as limited explainability and ensuring high-quality, unbiased training data. The regulators have adopted a technology-agnostic approach, applying existing rules on data management, model risk management, governance, and operational resilience to AI. However, as AI models become more powerful and widely adopted, there is a need to reassess whether these frameworks are sufficient

On the macroprudential level, Breeden highlighted that the reliance on a few AI model providers could introduce macroeconomic fragilities. The Financial Policy Committee will assess AI's impact on financial stability and the BoE already has tools that can be leveraged such as using stress tests to understand AI model interactions. The UK also introduced a new regime for critical third-party service providers to address concentration risks and the impact on operational resilience. Depending on AI's evolution, authorities may need to reconsider the regulatory perimeter and requirements for model providers.

Breeden's speech underscores the BoE's scrutiny of AI adoption and its readiness to act as technology and its applications evolve. A consultation paper on the Senior Managers Regime is expected soon which may include questions on AI, and the BoE will further explore the topics highlighted in her speech through a new public-private AI forum.

FCA launches new AI initiative

Jessica Rusu, Chief Data, Information and Intelligence Officer at the FCA, announced the launch of the AI Lab in a speech on 17 October 2024. This initiative aims to support firms' exploration of artificial intelligence (AI) and ensure the safe and responsible development of AI technologies. It will also inform the FCA's regulatory approach.

The AI Lab will consist of four key components:

- AI Spotlight: The platform will allow firms and innovators to share real-world examples of AI applications, showcasing emerging solutions that can drive industry growth. Applications close on 17 November 2024.
- AI Sprint: This event will bring together experts from industry, academia, regulation, technology and consumer groups to inform the FCA's regulatory approach to AI and create the right environment for growth and innovation. Interested firms can register their interest for this event, taking place in London on 29 and 30 January 2025.

- AI Input Zone: An online feedback platform launches in November 2024, inviting stakeholders to share their views on the most transformative AI use cases, the current regulatory framework, and potential future adaptations.
- Supercharged Sandbox: This enhanced version of the FCA's existing sandbox will offer greater computing power, enriched datasets, and increased AI testing capabilities, addressing the specific needs and challenges faced by firms in the AI space.
- Rusu also highlighted other significant actions taken by the FCA over the past decade, compiled in a newly published Lookback Report. It details the support and innovation services provided by the FCA to firms across the sector. This includes the regulatory sandbox, the Innovation Pathways and the TechSprints.

Competition

FCA CEO highlights opportunity in private markets growth

Nikhil Rathi, FCA CEO, gave a speech at the Investment Association Annual Dinner on 29 October 2024. Rathi discussed the Court of Appeal's recent ruling that it was unlawful for car dealers to receive a commission from a lender providing motor finance to a customer unless it was disclosed to the customer and they gave informed consent to the payment. He said the regulator is in close contact with industry, the Financial Ombudsman Service and Government to monitor the impact of the judgment. The FCA is considering expanding the pause to the deadline for responding to discretionary commission complaints, to cover complaints related to other types of commission in motor finance.

Rathi noted the growth in private markets and the opportunities which this creates, highlighting five themes in unlocking these opportunities:

- Resetting the narrative on risk vs. opportunity: Rathi stressed this must be done in a transparent way which is not oblivious to systemic risks.
- Technological and product innovation: The regulator emphasises that embracing the use of new and growing products and innovations such as tokenisation can create opportunities.
- Value and fees: The FCA wants sufficient incentives to support appropriate consumer investment in higher yielding products and is open to discussion on what is meant by assessment of value.
- Enabling and proportionate regulation: The regulator will work with firms in 2025 on data collection as part of the AIFMD review. The intention is to collect appropriate data to provide transparency and a whole market view.
- Talent and skills: Rathi highlights the need for the sector to focus on harnessing even more of the UK's diverse talent pool in order to maintain its competitive advantage.

Conduct

FCA calls on firms to focus on non-financial misconduct

The FCA published survey findings on how firms detect and handle incidents of non-financial misconduct, on 25 October 2024. The survey of over 1,000 firms was sent to wholesale banks and brokers, and London market insurers and intermediaries in February 2024. While the findings are specific to the firms in the sectors surveyed, they will also be of interest to other FCA-regulated firms.

The FCA found that the number of reported non-financial misconduct incidents increased over the three years surveyed, 2021-2023. However, the FCA makes clear that interpreting the survey results requires careful contextualisation. This is because, for example, a high number of incidents may be an indication of a healthy speak up culture, rather than a poor culture.

The regulator shared findings and key takeaways in several areas, including in non-financial misconduct detection, incident outcomes and governance. On governance for example, the FCA found that 38% of firms did not share MI on non-financial misconduct with the board, and 33% lacked a formal governance structure for such cases. The FCA expects firms to reflect on the data and how they compare to peers, and to consider at a board and senior management level whether they need to improve their culture, how they identify and manage risks, and how they address non-financial misconduct.

The FCA will use the survey responses to inform ongoing supervisory work across the four portfolios. It is also due to issue final rules and guidance by the end of this year on the non-financial misconduct aspects of its diversity and inclusion proposals, consulted on in September 2023. Final policy on the remaining proposals is due next year.

See our At a glance publication for more details.

Financial crime

FCA warns firms on financial crime obligations

The FCA published Market Watch 80 on 9 October 2024, reminding firms of their obligations to maintain controls sufficient to ensure compliance with their regulatory obligations, including regarding financial crime.

The FCA highlighted the risk firms face when they execute trades for aggregated accounts where there is no visibility over the ultimate beneficial owners (UBOs). The FCA found examples of FCA-regulated firms unknowingly executing trades for individual UBOs who had previously had their trading accounts at those firms terminated due to suspected market abuse. The risk of transacting on behalf of individual UBOs who may be using their accounts to conduct financial crime, including organised criminal groups, is particularly high when the account is administered by an overseas firm from a jurisdiction with lower market abuse requirements.

The FCA encourages firms to take extra precautions when onboarding and trading with such accounts. Examples include ending relationships when firms identify suspicious trading patterns, requiring clients who administer overseas aggregated accounts to provide information about their systems and controls to prevent market abuse, and asking such clients to differentiate between trades for different individual UBOs, so that action can be taken when trading patterns fall outside of firms' risk tolerances.

Regulatory agenda

Regulators update forward-looking Regulatory Initiatives Grid

The regulators published an interim update to the Regulatory Initiatives Grid on 16 October 2024, setting out their planned initiatives for Q4 2024 and Q1 2025. Publication of the Grid was delayed earlier this year due to the general election. Due to the replanning required as a result, the Financial Services Regulatory Initiatives Forum has published an interim rather than a complete grid.

The update details timing changes for certain previously announced initiatives, and a number of new initiatives, including:

- a PRA and FCA review of the banking remuneration regime (Q4 2024).
- an FCA cross-sector review of rules and guidance to firms when identifying harm and conducting firm-led redress exercises (Q1 2025).
- a consultation on the Bank of England's Fundamental Rules for Financial Market Infrastructures (FMIs) and a publication on the Bank's supervisory approach to FMIs (Q4 2024).
- an FCA consultation on the definition of capital under MiFIDPRU for investment firms (Q1 2025).
- FCA final rules on market transparency changes (Q4 2024).

- a discussion paper on reviewing the UK transaction reporting regime (Q4 2024).

Supervision

FCA CEO embraces 'predictable volatility'

In a speech delivered on 8 October 2024 at the FCA's International Capital Markets Conference, FCA CEO, Nikhil Rathi, outlined the regulator's view of the macro trends influencing and shaping capital markets in the UK and globally.

Reflecting on his experiences of market disruption and crises whilst the FCA Chief Executive, Rathi explained that regulators and market participants must now expect and be prepared to face 'predictable volatility' as a new market norm. Rathi emphasised the opportunity for the UK to lead the way in meeting the challenges by driving forward initiatives across a number of key areas. This includes: nurturing liquidity by tailoring regulation to bolster growth and competitiveness; shifting from reactive to proactive regulation that is guided by outcomes; adopting a new mindset towards risk; investing in infrastructure; and deepening market engagement.

FCA CEO discusses approach to growth

FCA CEO Nikhil Rathi gave a speech on the regulator's secondary objective for growth and international competitiveness at the Mansion House on 17 October 2024. He discussed the FCA's 'name and shame' proposals to make enforcement proceedings more transparent. Rathi said that 'a degree more openness can reduce harm, build whistleblower confidence and benefit firms that play by the rules'. He said the FCA has 'heard the strength of opposition' to the proposals, and will next month provide more data and case studies on how a public interest test could work in practice. Rathi added that 'relatively few cases' would be affected by the proposals. The FCA Board will make a decision on the proposals early next year.

In addition, Rathi said the FCA has heard industry concerns about regulatory data requests, but noted that a lack of timely data has featured in recent market issues such as OTC trading in the nickel episode. He said: 'We all need to invest in technology to make it easier to share data and ease regulatory burdens.' Rathi also called for a collaborative approach to drive progress in areas such as: tokenisation in asset management, the Smart Data Bill for the next phase of Open Banking, the National Payments Vision, T+1 settlement, pensions dashboards, and identity authentication.

Rathi concluded by questioning the level of appetite for accepting greater risk, asking whether policymakers are willing to set metrics for tolerable failures to create conditions to unlock growth capital, and calling on firms to take responsibility for the outcomes they deliver.

Alongside the speech, the FCA published a research paper on the relationship between regulation and growth.

Sustainability

FCA responds to market review on delivering finance for decarbonisation and UK growth

The Transition Finance Market Review (TFMR) published its report which sets out recommendations on how to scale a transition finance market which can support UK and global net-zero ambitions, on 17 October 2024. The FCA published a response, which recognises the challenges in structuring such finance, but reaffirms that supporting the market to scale appropriately remains an area of priority. Firms are encouraged to read the TFMR's recommendations which include:

- improving the commercial viability of transition activities
- collaboration between the market and regulators to establish key transition finance metrics
- international alignment and collaboration.

The FCA also acknowledged concerns raised by some firms to the TMFR about being accused of greenwashing when making claims about future decarbonisation. The FCA referenced existing guidance around its approach to greenwashing rules, including on transition-related claims.

TNFD publishes draft guidance on nature transition planning

The Taskforce on Nature-related Financial Disclosures (TNFD) published on 27 October 2024 a discussion paper (DP) on draft guidance for corporates and financial institutions developing and disclosing a nature transition plan (TP). The DP focuses on guidance for developing and disclosing a TP, including what a nature plan should include, how it should be presented and how it should be disclosed. The TNFD recommends five transition planning themes:

- Foundations - the overall approach to the nature transition.
- Implementation strategy - the planned actions to undertake to align the business with the TP priorities.
- Engagement strategy - plans for how to work with others to support the TP's delivery.
- Metrics and targets - what will be used to monitor progress against the TP priorities, and
- Governance - the structures / processes at board and management level to oversee, incentivise and support the TP implementation.

Climate change and greenhouse gas emissions as drivers of nature loss are excluded, as are natural carbon stocks. Guidance for these topics is covered by other organisations like the Glasgow Financial Alliance for Net Zero.

The draft guidance aligns with the Transition Plan Taskforce's recommendations for climate transition plan disclosure.

The consultation closes 1 February 2025. Final guidance will be published in 2025.

Banking and capital markets

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Bank structures

HMT sets out plans to reform ring-fencing

The Economic Secretary to the Treasury, Tulip Siddiq, confirmed in a written statement to Parliament on 14 October 2024 the Government's plans to reform the ring-fencing regime for large banks.

The reforms will include:

- the introduction of a secondary threshold to exempt retail-focused banking groups from the regime - where investment banking activity accounts for less than 10% of Tier 1 capital
- new flexibilities to allow ring-fenced banks to operate globally, subject to PRA rules
- measures to encourage more investment by ring-fenced banks in UK SMEs
- measures to reduce the compliance burdens associated with the regime
- an increase in the primary deposit threshold for ring-fenced banks, from £25bn to £35bn.

The Government plans to implement a package of reforms as soon as parliamentary time allows.

Capital and liquidity

Bank of England consults on amendments to MREL framework

The Bank of England (BoE) published a consultation paper on 15 October 2024, setting out amendments to its approach to setting a minimum requirement for own funds and eligible liabilities (MREL). The BoE has grouped the proposals around three themes:

- Restating, with modifications, certain UK Capital Requirements Regulations total loss-absorbing capacity provisions in the MREL Statement of Policy and other related changes.
- Updates to the BoE's indicative thresholds for setting a stabilisation power referred resolution strategy.
- Revisions to reflect findings from the second assessment of the BoE's Resolvability Assessment Framework for major UK firms (which was published on 6 August 2024) and other lessons from policy implementation.

The BoE invites feedback to the proposals by 15 January 2025.

PRA consults on proposals to restate the remainder of CRR

The PRA issued a consultation on 15 October 2024, setting out proposals to restate relevant provisions in the Capital Requirements Regulation (CRR) in the PRA Rulebook and other PRA policy material, including supervisory statements or statements of policy.

Following the passage of the Financial Services and Markets Act 2023, the PRA has undertaken a process to restate or amend parts of the CRR, including through the implementation of Basel Standards in PS 22/21, PS 17/23, and PS 9/24. The PRA's latest consultation sets out how the PRA proposes to restate and, in some cases modify, the remaining CRR requirements in the PRA Rulebook.

The PRA proposals consist primarily of the restatement of assimilated law into the PRA rules and policy materials without modifications. It has proposed a number of modifications in certain areas as part of their restatement. The more substantive proposed changes are to the securitisation requirements, including:

- a formulaic p-factor for the securitisation standardised approach
- a new capital treatment of retail residential mortgage loans under the Mortgage Guarantee Scheme (MGS) and private mortgage insurance schemes with similar contractual features to MGS
- supervisory expectations relating to the use of unfunded credit protection in synthetic significant risk transfer securitisations.

The consultation closes on 15 January 2025. The PRA proposes that the implementation date for the draft PRA rules set out in this consultation would be 1 January 2026, alongside the PRA rules implementing the Basel 3.1 standards.

PRA consults on Large Exposures Framework

The PRA issued a consultation on 18 October 2024 setting out its proposals to implement the remaining Basel large exposures standards (LEX standards). The proposals include a number of proposed amendments to the large exposures (LE) framework, including:

- removing the possibility for firms to use internal models (IM) methods to calculate exposure values to securities financing transactions (SFTs) for the purposes of the LE regime
- introducing a mandatory substitution approach to calculate the effect of the use of credit risk mitigation (CRM) technique
- removing the option for firms to exceed LE limits for trading book exposures to third parties
- allowing firms to exceed LE limits for trading book exposures to intragroup entities, and simplifying the calculation of the additional capital requirements
- allowing firms to apply for higher LE limits to exposures to intragroup entities, and amend the conditions firms need to meet to mitigate the higher concentration risk
- removing the exemption from LE limits to firms' exposures to the UK deposit guarantee scheme (DGS)
- remove the stricter requirements on exposures to certain French counterparties.

The consultation closes on 17 January 2025. The PRA proposes that the implementation date for the changes resulting from the proposals would, except for the proposal on SFTs, take effect shortly after publication of the final policy statement. The proposal to remove the possibility for firms to use IM methods to calculate exposure values to SFTs would take effect on 1 January 2026.

Conduct

FCA finds shortcomings in payments firms' Consumer Duty implementation

The FCA issued findings from its review of payments firms' implementation of the Consumer Duty on 7 October 2024. The review assessed how firms had considered the Duty's requirements and specific payments sector risks (as set out in the FCA's February 2023 Dear CEO letter), and how they had addressed any gaps.

The FCA found that just under half of the firms reviewed had only partially implemented the Duty and required significant work to comply with it. According to the FCA, a substantial minority of payments firms may not be compliant with the Duty.

The regulator found that creating a robust and sustainable MI suite was the biggest challenge for many firms. Difficulties included identifying a meaningful set of metrics which were directly relevant to the Duty outcomes, could be collected regularly, and were linked to the evaluation and decision-making process.

Some firms did not recognise the higher standards the Duty requires of their business, or suggested that they did not need to make changes to comply with its requirements.

The regulator also looked at what information was given to the firm's Board or senior governing committee about Duty implementation, and the degree of challenge over it. It did not see much challenge to Duty implementation reflected in the Board or senior governing committees' minutes. A key requirement of the Consumer Duty is that firms assess, test, understand and evidence customer outcomes.

The FCA will continue to monitor how firms are meeting the Consumer Duty standards, and take appropriate supervisory actions where necessary. It has given sample firms individual feedback, and expects them to deal with any identified implementation gaps promptly. See our At a glance for more details.

Financial resilience

FCA shares findings of review of lenders' financial resilience

The FCA published the findings of a multi-firm review of the financial resilience of consumer credit firms and non-bank mortgage lenders on 23 October 2024. The FCA carried out the review against the backdrop of a period of economic change, with rising interest rates and cost of living pressures. The FCA found some firms were not adequately prepared for this changing economic environment.

The FCA found that the majority of firms could improve their approach to risk governance and risk management and that some firms had an inadequate approach to identifying the risks that could affect their business, and did not have adequate systems in place to measure and monitor these risks. The FCA reiterated its expectations that firms should develop a risk management approach that is appropriate to the size and scale of their business, and which enables the management team to have clear sight of potential issues. The regulator also found inadequacies in firms' wind down planning. It shares good and poor practice examples across both groups of firms and expects firms to review the findings and make any necessary improvements to their approach and procedures.

Fraud

FCA issues reminder on APP fraud reimbursement

The FCA issued a Dear CEO letter on Authorised Push Payments (APP) fraud reimbursement on 7 October 2024. The letter is a reminder of firms' obligations, the role of the Consumer Duty, and the FCA's data-led approach to monitoring progress.

Banks and Payment Service Providers should work to reduce APP fraud by improving their anti-fraud systems and controls, avoid causing foreseeable harm under the Consumer Duty, and provide consumers with information on dispute resolution procedures where required. Firms planning to provide a lower level of APP fraud reimbursement protection 'on us' or intra-firm payments, should clarify this with the FCA.

The new APP fraud reimbursement rules came into effect on 7 October 2024. The FCA and the Payment Systems Regulator will work together to monitor firms' compliance with the regime.

Payments

BoE updates RTGS service hour plans

The Bank of England (BoE) issued a discussion paper response on extending Real-Time Gross Settlement (RTGS) service hours on 3 October 2024.

Based on the feedback, the BoE has set its initial vision for extended RTGS and CHAPS settlement hours. The BoE sees clear public policy benefits from extending RTGS and CHAPS settlement hours, including to enhance cross-border payments, reduce settlement risk and liquidity costs, and to facilitate innovation and provide a better experience for customers in the evolving payments landscape.

There are cost and risk implications to consider before making a final decision and implementing changes will take time, with no extension before 2027. There is a strong case for a first-stage extension of 4.5 hours in the morning, so that settlement starts at 1.30am. Extending settlement hours to later in the day is more operationally challenging and will not be part of the first stage. However, the BoE's current ambition is to move to near 24x7 settlement hours around the turn of the decade, and will work with industry to define the operating and service model.

The BoE has not made the final decision to extend the settlement hours and will issue a consultation on a more detailed proposal on the end-state ambition and interim stages in 2025. The final decision is to be made in late 2025 or early 2026.

BoE calls for more payments innovation

Andrew Bailey, the Bank of England (BoE) Governor, gave a speech on 26 October 2024 on the future of payments. Bailey stressed the need to modernise payment systems, particularly cross-border and wholesale payments, by harnessing digital technology.

The BoE continues to lead and enable digital and other innovation within wholesale payments, for instance through experimenting on a tokenised central bank digital currency (CBDC). Within the retail payments space, Bailey considers the best home for such innovation to be commercial banks instead of the BoE. Bailey said the BoE nevertheless continues to prepare for a retail CBDC, due to not having seen enough evidence that the required innovation will happen in commercial banks

Retail products

HM Treasury sets out approach to regulating Buy Now Pay Later

HM Treasury (HMT) launched a consultation on proposals to bring unregulated Buy Now Pay Later (BNPL) lending under FCA regulation on 17 October 2024. The previous Government announced its intention to regulate interest-free BNPL products in February 2021 after risks were identified by the Woolard Review, and consulted on draft legislation in February 2023, but did not bring forward legislation before Parliament was dissolved in May 2024.

In its consultation (which takes into account feedback to the February 2023 consultation), the Government proposes to capture third-party lenders offering deferred payment credit agreements. Agreements provided directly by merchants would continue to be exempt from regulation. Credit broking activities that relate to BNPL agreements would be excluded from regulation unless the activity is carried out in the home of a customer.

HMT proposes that disclosure rules under the Consumer Credit Act will not be applied; instead the FCA will develop a bespoke regime in line with the Consumer Duty. The FCA will also decide how rules on creditworthiness and affordability assessments should be applied. HMT proposes to apply Section 75 of the Consumer Credit Act, which allows consumers to claim refunds from their lender, and to enable BNPL borrowers to complain to the Financial Ombudsman Service. It also intends to put in place a Temporary Permissions Regime.

The consultation closes on 29 November 2024, and final legislation is expected to be laid in Parliament in early 2025. In an update, the FCA said it will consult on rules shortly after legislation is finalised. The rules are expected to take effect in 2026.

The Government intends to set out proposals for broader reform of the CCA in due course.

Supervision

FCA publishes portfolio letters

The FCA issued portfolio letters addressed to retail banks, building societies, non-bank mortgage lenders (NBMLs) & mortgage third party administrators (MTPAs), and lifetime mortgage providers on 23 October 2024. The letters confirm its supervisory priorities for 2025:

- Consumer Duty: The FCA will focus on how firms are embedding the Duty. Firms should continue to refine their approach e.g. in monitoring customer outcomes, governance processes, and treatment of customers in vulnerable circumstances.
- Customers in financial difficulty: It plans to monitor data on arrears and payment shortfalls and firms' resourcing of and controls over their collections and recovery functions.

- Access: The FCA wants to ensure that as banks and building societies transform their channels and services, customers are not left behind and that consumers are not unreasonably or unlawfully excluded from banking services.
- Operational resilience: It will continue engaging with firms on their technology change plans and their progress to meet the March 2025 operational resilience deadline.
- Financial crime and fraud: The regulator expects firms to continuously improve fraud and financial crime controls and it plans to make increasing use of data to identify outlier firms.
- Sustainable finance: The FCA will be monitoring firms' sustainability-related claims and controls following the anti-greenwashing rule introduction.
- Financial resilience: It expects firms to have adequate financial resources in place, to keep stress assumptions up to date, and to maintain adequate wind down plans.

Firms' boards should discuss the contents of the letters, review their approaches to mitigating the risks outlined and be prepared to explain the steps taken to remediate any issues.

Asset and wealth management

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Conduct

PIMFA issues guide on customer vulnerability

The Personal Investment Management & Financial Advice Association (PIMFA) held a launch event for its Guide on Understanding Customer Vulnerability on 24 October 2024. The PIMFA guide aims to support firms in identifying customers with vulnerable characteristics and implementing effective processes which ensure good outcomes for these customers. Whilst it is not prescriptive, it includes guidelines and requirements for firms, as well as relevant case studies and examples of good practice as highlighted by the regulator.

Graeme Reynolds, Director of Consumers and Competition at the FCA, spoke at the event, noting progress made by firms in this area but that areas for improvement remain. Reynolds highlighted identifying vulnerable customers as the key first step for firms. Whilst the percentage of customers identified by firms as vulnerable has increased to 5% (c.2.5% as per 2022 wealth survey) for portfolio managers and 1% (c.0.8% as per 2022 wealth survey) for stockbrokers, this remains well short of the data from the FCA's 2022 financial lives survey, which indicated nearly a third of consumers with investable assets of over £50,000 displayed at least one indicator of vulnerability. More generally, Reynolds noted positives from the FCA's ongoing supervisory review work, with a multi-firm review of vulnerable customer guidance due out Q1 2025. He noted good practice such as firms implementing effective 'tell us once' policies, and offering tailored support when engaging with customers one on one. Areas of concern include some firms not taking proactive action to identify vulnerable customers, and a lack of data-driven monitoring of firms' policies and outcomes for customers.

Supervision

FCA sets out expectations for advisers and investment intermediaries

The FCA issued a Portfolio Letter on 7 October 2024, setting out its expectations for financial advisers and investment intermediaries, and its priorities over the next two years.

The FCA announced a multi-firm review of consolidation within the market. It has set out its expectations for such transactions involving regulated firms which include: obtaining FCA approval; ensuring delivery of good outcomes is central to a firm's culture; appropriate due diligence; holding adequate financial resources; and considering relevant existing guidance. The FCA intends to assess and challenge the suitability of the financial soundness of transactions of which it is notified, and where such transactions are completed prior to regulatory approval, the FCA may object or initiate criminal proceedings.

The FCA noted an increase in the proportion of advice revenue generated by firms from ongoing advice. The FCA raised concerns that firms are not adequately considering the cost and relevance of these services for all clients. Firms are reminded to ensure that services offered are appropriate and represent fair value for their clients. The FCA aims to provide a further update later this year on its findings and next steps.

Following its thematic review of the retirement income market earlier in the year, the FCA is carrying out further work to explore the scale of any issues identified and to tackle any harms. The FCA intends to publish further commentary in Q1 2025.

On its 'polluter pays' proposals under the Financial Services Compensation Scheme, the FCA expects publication of its Capital Deduction for Redress consultation before the year end. This may require personal investment firms to set aside greater capital for potential redress.

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Conduct

FCA launches market study into premium finance

The FCA announced a market study into the provision of premium finance for motor and home insurance on 16 October 2024. The FCA aims to understand whether premium finance offers fair value and whether competition is functioning effectively in the market.

The study will examine market dynamics, including the roles of insurers, intermediaries, and specialist premium finance providers. In particular, the FCA will explore: the extent of poor customer outcomes; lack of competitive constraints; obstacles to customer decision-making; and misalignment of incentives with customer interests.

The market study is part of a broader FCA programme of work addressing issues in motor insurance, including a review of motor insurance business models, and the evaluation of the General Insurance Pricing Practices rules introduced in 2022. The findings of these pieces of work will be integrated into the study, including any proposed remedies, to ensure a coherent approach to regulatory oversight of the motor insurance market.

While the FCA is not formally consulting on its Terms of Reference, it welcomes any views by 18 November 2024. The FCA plans to publish a progress update and proposed next steps in H1 2025.

Alongside the study, the Government launched a taskforce to address the rise in motor insurance premiums by an average of 21% over the past two years. The taskforce aims to identify actions that may stabilise or reduce motor insurance premiums. It will focus on groups that are disproportionately affected by high prices, including ethnic minorities, those on lower incomes and elderly and young drivers.

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