

**"You go for the quality of the performance, not the longevity of it."**

**Don King**

As the new DISP rules allow for customers to make complaints to the financial ombudsmen service based on performance, firms may have to further ensure that their consumer outcomes are satisfactory.

## **Changes to DISP (Complaints Handling)**

Changes to DISP came into effect at the beginning of July which impact complaints communications and firms' websites and possibly terms of business. The changes to DISP will impact all firms which could receive or handle complaints relating to regulated activity and some rule changes have been effective for complaints received on or after 9th July 2015. Further rules come into force over the next year.

The changes, which are driven by the EU Alternative Dispute Resolution (ADR) Directive, can be broadly divided into three areas as follows:

1. Changes to the categorisation of a complainant and impact on process and reporting to the FCA
  - FCA is amending the definition of eligible complainant and consumer
2. Changes which impact communications and process
  - How information about FOS should be provided to eligible complainants – affects complaints letters
  - Firms are required to opt in or out of the time limit rules in relation to when a complaint may be considered by the FOS – affects complaints letters and internal processes
3. Changes which impact the way a firm deals with the FOS and the FOS handles complaints
  - Firms are required to agree or refuse the FOS permission to investigate a complaint before the firm itself has done so
  - Reduction in the range of grounds on which the FOS can reject a complaint, including allowing complaints based on performance
  - Setting out that FOS may reject a complaint when the complainant does not provide required information or misses an FOS set deadline.

## **HMRC and FCA will launch a joint consultation exploring what can be done to improve customers' access to financial advice.**

The consultation, which is the first major milestone of the Financial Advice Market Review, will focus on the following questions.

- What kind of financial advice do consumers want?
- Are there gaps between the financial advice that consumers want, and the financial advice that they can access and afford?
- How can these gaps be closed?
- What role could technology, such as "robo-advice", play in improving access to financial advice?

Tracey McDermott, acting CEO at the FCA said "The financial decisions people make can have long reaching effects. It is important that the market provides accessible and affordable advice when people need it...The review is a chance for the FCA, government, industry and consumers to work together to ensure we can deliver a market that meets this need.

## **Government takes the reins on regulation of governance at Financial Services firms**

One of the most controversial topics for senior managers in the new accountability regime was the reverse burden of proof.

Under the senior manager and certification regime (SMCR) rules, it was proposed that senior managers would be guilty of misconduct if there was a breach of a regulatory requirement by the firm for which they were the senior manager responsible. It would be up to the senior manager to satisfy the FCA or PRA that they were not guilty because they took such steps that a person in their position could reasonably be expected to take to avoid the breach occurring or continuing.

This principle has been scrapped in the Bank of England and Financial Services Bill which had its first reading in the House of Lords. Instead, there is a "duty of responsibility" which requires management to take appropriate steps to prevent a regulatory breach from occurring. In the explanatory notes to the bill, the Government notes that: "no senior manager will be guilty of misconduct unless the regulators can prove that the senior manager did not take reasonable steps to avoid the breach happening. As amended, this ground of misconduct will also apply to senior managers at all authorised persons, and not just those in banks or other relevant authorised persons".

## **Transfers of Personal Data to the US under scrutiny**

The Court of Justice of the European Union has ruled that the EU-US Safe-Harbour agreement is invalid and that it does not provide adequate levels of protection for European citizens whose personal data is transferred to the US for processing.

One of the key reasons for the decision is the concern around the apparent indiscriminate collection of personal data by US intelligence agencies which contradicts many underlying principles of European data protection law.

This decision has an impact upon all who transfer personal data to US organisations for processing (which extends to hosting and storing data such as emails or personnel records on US-based servers). It is important to understand how this decision will affect your business and to take the necessary steps to ensure that any transfers of data to the US remain fully compliant with UK and European data protection laws.

As a result of this decision, organisations in the UK must evaluate their arrangements with US-based organisations to which personal data is transferred. The decision will

have an impact on organisations of all sizes, for instance it will affect multi-national companies which centrally store personal data in the US (such as HR records and customer details), as well as smaller organisations which engage US-based service providers for certain IT functions such as email, cloud storage and disaster recovery.

**FCA proposes changes to encourage better customer communications**

In June 2015, the FCA published a discussion paper on Smarter Consumer Communications, in which it called on firms to think about how they can improve their communications to help consumers make more effective decisions about their finances. At this time, the FCA also set out its intention to consult to remove a number of existing disclosures as part of its commitment to create a sustainable regulatory framework.

Christopher Woolard, director of strategy and competition at the FCA, said *"We would like to see firms changing the way they interact with their customers. We have been encouraged to see a number of firms are already doing this...Today's announcement reflects our commitment to sustainable regulation and addresses disclosures that are not working for consumers, giving firms the freedom to communicate with their customers in a more flexible and open way."*

The FCA is proposing to amend the following rules and guidance:

- The Consumer-Friendly Principles and Practices of Financial Management
- Short report
- The Initial Disclosure Document/Combined Initial Disclosure Document
- Services and Costs Disclosure Document.

**FCA introduces new rules on whistleblowing**

The publication of the FCA's and PRA's final rules on improving individual accountability in the UK banking sector on 7 July 2015.

Tracey McDermott, acting FCA chief executive, commented *"Whistleblowers play an important role in exposing poor practice in firms and they have in the past few years contributed intelligence crucial to action taken against firms and individuals. It is in the interests of the industry and regulators alike that wrongdoing is identified and addressed promptly. For individuals to have the confidence to come forward, it is vital that firms have in place adequate policies on dealing with whistleblowers and that a senior manager takes responsibility for overseeing these policies."*

- appoint a Senior Manager as their whistleblowers' champion
- put in place internal whistleblowing arrangements able to handle all types of disclosure from all types of person
- put text in settlement agreements explaining that workers have a legal right to blow the whistle

- tell UK-based employees about the FCA and PRA whistleblowing services
- present a report on whistleblowing to the board at least annually
- inform the FCA if it loses an employment tribunal with a whistleblower
- require its appointed representatives and tied agents to tell their UK-based employees about the FCA whistleblowing service

**AIFMD passport and national private placement regimes – speech by Steven Maijoor (ESMA)**

Steven Maijoor, chair, European Securities and Markets Authority (ESMA), has given a speech to the European Parliament entitled *"ESMA advice on the application of the AIFMD passport to non-EU AIFMs and AIFs and ESMA opinion on the functioning of the AIFMD EU passport and of the National Private Placement Regimes of 30 July 2015"*

Dr Maijoor stated that, because delays in implementation had, in practice, given ESMA one year to prepare its opinion, rather than the envisaged two, it will prepare a further opinion on the National Private Placement Regimes' once the AIFMD has been in place for a longer period and in the meantime ESMA will:

- seek to promote a common approach to marketing rules, which are currently divergent, across Member States;
- continue its assessment of whether to extend the passport to Hong Kong, Singapore and the US, based on its assessment criteria of (i) investor protection, (ii) market disruption, (iii) competition and (iv) the monitoring of systemic risk;
- begin to assess Australia, Canada, Japan, the Cayman Islands, the Isle of Man and Bermuda, as a second group of non-EU countries; and
- focus on the extensive framework needed if the passport is extended to one or more non-EU countries and preparing for ESMA's role in that system and strengthening the supervisory cooperation that will be crucial to its success.

**FCA thematic review on consumer credit firms' staff remuneration and incentives**

The FCA has launched a thematic review on how consumer credit firms pay and incentivise their staff and manage the risks arising from these reward arrangements, focusing in particular on:

- the risks that can arise from reward arrangements;
- how firms control and mitigate those risks; and
- firms' good and poor practices.

The FCA expects to publish a report of its findings in early 2016.

**FCA censures Bank for listing rules breaches and failing to be open with the regulator**

In a joint investigation with the Prudential Regulation Authority (PRA), the FCA also found that the Bank fell short of its responsibility to be open with its regulators, which is one of the principles that regulated firms must abide by.

The Bank's failings would normally merit a substantial fine. However, in the circumstances, the FCA has decided not to impose a financial penalty. The PRA has also, given the exceptional circumstances, issued the Bank with a public censure.

Georgina Philippou, acting director of enforcement and market oversight, said *"Firms have a very basic but extremely important responsibility to be transparent with their investors and with us, as their regulator, and [the] Bank fell short of this. As a result, investors were left unaware of [the] Bank's true capital position and we were left in the dark about intended changes to senior personnel at the bank."*

**FCA thematic review on early arrears management in unsecured lending**

The FCA has launched a thematic review into how lenders treat customers in early arrears, and the outcomes for those customers. In particular, the review will test whether firms:

- protect the interests of their customers;
- are compliant with FCA rules, including the Principles for Businesses, and
- employ good practice.

The FCA expects to publish a report of its findings in early 2016.

**FCA issue Policy Statement regarding Changes to the Approved Persons Regime for Solvency II firms: Final rules**

The rules cover two main issues. Firstly reforms to the Approved Persons Regime for firms to whom the PRA have applied the Solvency II regime. These rules represent an important part of our drive to improve standards of individual conduct across the financial services industry. The second area is a series of minor, consequential amendments across the FCA Handbook as a result of the changes in the accountability regime for banks and Solvency II firms.

**FCA Enforcement Cases**

**FCA bans and fines individual for SIPP advisory failings**

The FCA found the individual had failed to ensure that it had assessed the suitability of investments made through self-invested personal pensions (SIPPs) for its customers, and failed to ensure that it had identified and managed its conflicts of interests.

Georgina Philippou, acting director of enforcement and market oversight at the FCA, said *"[the individual] exposed customers to risky investments without considering if these products would meet their needs. In addition, he personally benefitted from sales of these products without revealing to customers the full extent of the benefits he received. His actions mean that many customers faced losing all of their hard earned pension funds. This is not the conduct we expect of senior individuals."*

**FCA secures High Court Judgment awarding injunction and over £7 million in penalties against five defendants for market abuse**

The FCA took action to stop the abuse in July 2011. This is the first time that the FCA has asked the High Court to impose a permanent injunction restraining market abuse and a penalty. [Four of the five defendants were incorporated or resident abroad in **Switzerland, the Seychelles and Hungary**].

Georgina Philippou, acting Director of Enforcement and Market Oversight, said *"This case demonstrates that we are prepared to take robust action to ensure the integrity of UK markets. We acted quickly to stop the abusive behaviour in 2011 and today's judgment means that those behind the abuse will now have to pay significant financial penalties."*

**Ex-IFA jailed over £350k theft from elderly clients**

A former financial adviser has been sentenced to six years in prison after a court found him guilty of stealing over £350,000 from four elderly and vulnerable people.

The advisor was an authorised independent adviser until 2003. But after his authorisation ceased he continued to manage the finances of some elderly people, often with no next of kin.

Using his position, he stole £356,883.16 from four elderly and vulnerable people.

The full extent of the crimes were revealed following an investigation into his dealings with one victim, a cerebral palsy sufferer from whom he stole £103,646,48.

Further investigation then revealed the individual had tricked another three individuals into signing wills to his benefit.

Crown Prosecution Service specialist fraud division deputy head Elizabeth Jenkins says *"It was clear that [the individual] selected his victims because he thought their age, and in one case their cerebral palsy, made them easy targets."*

**The Financial Conduct Authority (FCA) bans Kweku Mawuli Adoboli from the financial services industry**

Following convictions on 20 November 2012 of two counts of fraud by abuse of position, the Financial Conduct Authority (FCA) has banned Kweku Mawuli Adoboli from performing any function in relation to any regulated financial activity. Mr Adoboli abused his position as a senior trader of UBS AG causing UBS AG losses amounting to \$2.25bn.

**FCA publishes Final Notice for Keydata's former finance director, Craig McNeil, fining him £350,000 and prohibiting him from performing any significant influence function**

The FCA has fined Mr McNeil £350,000 and prohibited him from performing any significant influence function for failing to comply with Statements of Principle 4 and 6 of the FCA's Statements of Principle and Code of Practice for Approved Persons.

## Irish News

### Consultation on Corporate Governance Requirements for Investment Firms

The Central Bank continues to observe deficiencies in corporate governance practices in investment firms and is proposing to introduce statutory requirements, outlined in CP94. Proposals include:

- Minimum board size
- The composition of the board
- The role of the chairman
- The role of the CEO
- The frequency of board meetings
- The role and composition of the risk committee
- The role and composition of the audit committee

The requirements set out in the consultation will apply to all MiFID firms and non-retail investment intermediaries licensed or authorised by the Central Bank that are designated as High, Medium High or Medium Low Impact. Low Impact firms are encouraged to adopt the requirements.

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